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PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT OFFICE

Inventor :	Stephen Michael REUNING
Filing Date:	03 July 2001
Ser. No.:	09/897,826
Examiner:	Samuel G. RIMELL, Esq.
Art Unit:	2175

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SUPPLEMENTAL APPEAL BRIEF

This SUPPLEMENTAL APPEAL BRIEF is submitted in response to the 21 Aug. 2003 OFFICE ACTION. Applicant respectfully requests reinstatement of the appeal.

1 REAL PARTY IN INTEREST

The real party in interest is the applicant inventor.

2 RELATED APPEALS AND INTERFERENCES

There are no related appeals nor interferences which will directly affect nor be directly affected by nor have a bearing on the Board's decision in this appeal.

3 STATUS OF CLAIMS

Claims 1-19 are pending. Claims 1-19 stand rejected under 35 USC 102(e) over MCGOVERN *et al.* Claims 9-12 and 16-19 stand rejected under 35 USC 112, second paragraph.

4 STATUS OF AMENDMENTS

There are no pending claim amendments.

5 SUMMARY OF INVENTION

5.1 The Prior Art

This invention relates to headhunting on the internet.

The prior art includes various data bases where job openings can be listed and candidates can submit resumes. This art includes non-computer art such as newspaper and radio help-wanted ore help-available classified advertisements. The art also includes computer based things like internet based job-opening bulletin boards or resume data bases. Examples include Robert J. MCGOVERN, United States Letters Patent No. 6,370,510 and the various "Other Publications" cited therein as prior art (e.g., www.monsterboard.com, www.hotjobs.com, www.careermosaic.com, www.futurestep.com). The computer-based art, however, has functioned simply as electronic analogs of the non-computer art, broadcasting information on current job openings and accepting resumes from candidates who are actively seeking employment.

For any job opening, however, many potentially excellent candidates may not be actively seeking employment when the job becomes available. Thus, these candidates will not necessarily get the information posted in the employment classified ads or the various internet job sites. Further, because these potentially excellent candidates may not be actively seeking employment, they may not circulate their resumes widely - if at all. Saliently, all of the prior art requires a potential candidate to search job openings (in the newspaper classifieds, for example, or the internet job sites), write a resume, and then submit the resume to a newspaper or internet site for storage in a data base and review. Potential candidates who do not do this, do not show up in the prior art resume data bases. Thus, employers never get a chance to consider these candidates. This is unfortunate, because the very best candidates often are not currently seeking employment, and thus never get considered when a particular job becomes available. These candidates will not necessarily search the information posted in the employment classified ads, nor the various internet job sites. Further, because these potentially excellent candidates may not be actively seeking employment, they may not have a resume.

The claimed invention solves this problem. Rather than forcing a candidate to actively seek employment, the claimed invention can actually search for and find potential candidates –

even candidates who are not actively seeking employment, and do not have a resume. That's why Mr. REUNING calls his invention a "candidate chaser" – it chases good talent down, rather than waiting for good talent to find it. Thus, in contrast to the prior art, the claimed invention dispenses entirely with the requirement for a resume, a resume database, and a user interface required to ease resume entry into the database. Unlike the prior art, the claimed invention can work without these structures at all.

How the claimed invention does this, is summarized in the SPECIFICATION at page 5, lines 2-13. The invention (a) locates Internet web postings that contain operator specified keywords (*e.g.*, Boolean search terms); and (b) from those web postings, extracts the e-mail address, so that (c) an e-mail may be sent to the extracted e-mail address, advertising a given specific job opening. The claimed system does not require candidates to post resumes. Rather, the claimed system can "review[] data contained on Internet web sites, newsgroup postings and other data sources that may exist ... on the net." SPECIFICATION at 5, lines 16-21.

The process is described in the claims. Claim 1 reads:

> 1. A system for locating an individual with specifically defined professional qualifications, the system comprising:
> a. a filter that can search a web page to identify in said web page the presence or absence of specifically defined professional qualifications, and
> b. an e-mail address extractor that can extract an e-mail address from said web page.

Thus, the claimed invention entails two elements – a filter and an e-mail address extractor. These elements are put together to make a novel combination. This new combination achieves a result qualitatively different than that achievable using prior art approaches.

5.2 Conclusion

This case was originally filed in 1996. The prosecution history for this case has addressed dozens of patent and non-patent references. *See* REUNING, S.M., U.S. Letters Patent No. 6,381,592 (copy attached). The issues raised in this appeal were already resolved during prosecution of the parent application.

In prosecuting the parent patent, the Office raised a rejection based on Robert J. MCGOVERN, filed 8 May 1997. In response, the Applicant filed a RULE 131 DECLARATION

antedating MCGOVERN's effective filing date. The Office accepted the DECLARATION without objection, and withdrew the rejections based on MCGOVERN.

Further, the Applicant filed a PRELIMINARY AMENDMENT, explaining why MCGOVERN fails to teach certain claim elements. The Office accepted these Remarks without objection and withdrew the rejections based on MCGOVERN.

In explaining its decision to allow the parent patent, the Office issued a NOTICE OF ALLOWANCE (29 June 2001). That Notice explained, in the "Reasons for Allowance," why the subject matter claimed in this pending continuation application is patentable.

Now, the 21 August 2003 OFFICE ACTION (indeed each of the three OFFICE ACTIONS issued in this continuation case) rejects the claims based on references already conceded by the Office to be inapposite, and on factual assertions already found by the Office to be incorrect.

These rejections *should* be reversed as a matter of fact because they are factually incorrect. The rejections *must* be reversed as a matter of law because they are illegal.

6 ISSUES

6.1 The Issues Presented

The issues presented in this case fall into two classes: anticipation by MCGOVERN, and alleged vagueness under Section 112, second paragraph.

6.1.1 Prior Art Issues

Whether the Office may reject a claim based on a reference antedated by a RULE 131 AFFIDAVIT?

Whether MCGOVERN teaches "an e-mail address extractor that can extract an e-mail address from said web page"?

Whether MCGOVERN teaches "a filter that can search a web page to identify in said web page the presence or absence of specifically defined professional qualifications"?

Whether the Office's factual concessions in its NOTICE OF ALLOWANCE precludes the Office from later contesting those facts?

6.1.2 *Section 112 Issues*

Whether the OFFICE ACTION has pled a *prima facie* case that the claim terms "advanced natural language screening technology" and "as many linking levels as desired" are vague?

Whether issuing the claims of a parent patent constitutes a finding that the claim terms used are not vague under 35 USC 112, second paragraph, when those claim terms are copied into a continuation application?

Whether granting a PETITION TO MAKE SPECIAL based on "rigidly comparing" the application claim to an allegedly infringing device, is a concession that the claim is clear enough to "rigidly compare" to an allegedly infringing device, and therefore not vague under 35 USC 112, second paragraph.

Whether rejecting a claim over prior art is a concession that the claim is clear enough to compare to the prior art, and therefore a concession that the claim is not vague under 35 USC 112, second paragraph?

Whether a claim can be rejected under Section 112, second paragraph where the OFFICE ACTION does not propose any "improved mode of definition" for the disputed claim term?

6.2 The Reference Relied on by the Examiner

The Examiner relies on Robert J. MCGOVERN *et al.*, United States Letters Patent No. 6,370,510 (copy enclosed). MCGOVERN discloses a data structure for storing resumes, while the claimed invention requires none. MCGOVERN discloses searching this resume data structure to find potential candidates; in contrast, the applicant discloses a way of searching the Internet to find potential candidates, without using a data base of job openings or resumes at all. MCGOVERN is simply newspaper classified advertising, put on-line. MCGOVERN requires an on-line job opening data base, requires the applicant to review this data base, and requires the applicant to submit resume data to a resume database. The claimed invention does not.

MCGOVERN does not teach each of the claim elements. The Office said so, during prosecution of the parent application. The Office now takes the position that its own factual finding should be binding on the Applicant, but not binding on the Office. This position is creative, but is not new – the Supreme Court has already reviewed this position, and concluded that it is illegal.

7 GROUPING OF CLAIMS

The claims are each separately patentable, as explained in the following Argument.

8 ARGUMENT

We address the prior art rejection over MCGOVERN first. Second, we address the Section 112, second paragraph.

9 THE REJECTIONS OVER MCGOVERN

Claims 1-19 stand rejected over MCGOVERN. The rejection must be withdrawn because (1) the Office has already found that the Applicant antedates MCGOVERN, and (2) the Office has already found that MCGOVERN fails to enable certain claim elements. We address each in turn.

9.1 The Applicant has already antedated MCGOVERN

This application is a continuation of parent patent application Serial No. 08/984,650. The parent application was rejected over MCGOVERN, U.S. Letters Patent No. 5,978,768, filed 8 May 1997.

In response, Applicant filed a RULE 1.131 DECLARATION (14 July 2000) (copy enclosed). The Office accepted this DECLARATION without objection. *Cf.* MANUAL OF PATENT EXAMINING PROCEDURE § 602.03 ("In the first Office action the examiner must point out every deficiency in a declaration or oath and require that the same be remedied."). The Office accordingly withdrew the rejections based on MCGOVERN.

Here, the Office rejects the application based not on MCGOVERN's earlier patent, but his later continuation patent (U.S. Letters Patent No. 6,370,510, copy enclosed). This patent is a continuation of MCGOVERN's earlier '768 patent. As such, it has the same effective filing date as the parent patent - 8 May 1997. This date, however, was antedated by the Applicant in its RULE 1.131 DECLARATION. Because Applicant has already antedated MCGOVERN's filing date, neither the earlier parent nor a later continuation application is eligible as prior art, as a matter of law. Thus, as a matter of law, the rejections based on MCGOVERN **must** be withdrawn.

9.2 MCGOVERN does not teach a "filter that can search a web page"

Assuming that MCGOVERN were available as a reference, the Office has already concluded that MCGOVERN fails to teach either claim element. Claim 1 reads:

> 1. A system . . . comprising:
> a. a filter that can search a web page to identify in said web page the presence or absence of specifically defined professional qualifications, and
> b. an e-mail address extractor that can extract an e-mail address from said web page"

Claim 1 thus requires, "a filter that can search a web page to identify in said web page the presence or absence of specifically defined professional qualifications." MCGOVERN does not teach this. The OFFICE ACTION fails to allege otherwise, and the Office is estopped from so doing.

9.2.1 The OFFICE ACTION fails to allege that MCGOVERN teaches "a filter that can search a web page"

The OFFICE ACTION says that MCGOVERN "discloses a filter (col. 18, lines 51-67) in which a company employee (the hiring contact) can use a filtering program (search program) to search the specific resumes in the database." OFFICE ACTION at 3 (21 Aug. 2003). The OFFICE ACTION is correct: MCGOVERN teaches a filter that can search a database. MCGOVERN does not teach a filter can search a web page. Because the OFFICE ACTION fails to allege that MCGOVERN teaches "a filter that can search a web page," the OFFICE ACTION does not plead a *prima facie* case that MCGOVERN discloses claim element a.

9.2.2 The Office is estopped from arguing that MCGOVERN teaches "a filter that can search a web page"

This issue was addressed while prosecuting Applicant's parent application. While prosecuting Applicant's parent application, the Office made of record MCGOVERN's parent. Applicant pointed out that MCGOVERN does not disclose a system involving getting information - by filtering, extraction or otherwise - from a web page. Applicant expressly asked the Office to identify any objection to this factual assertion:

> Applicant believes, however, that the [Rule 131 Declaration] is unnecessary, as the explanations given above fully distinguish McGovern from applicant's claimed invention. Accordingly, if the Examiner concludes that reliance on the Rule 131 Affidavit is necessary to allow the claims, applicant respectfully requests that the Examiner expressly explain why, in the next Action.

PRELIMINARY AMENDMENT at 6-7 (24 July 2000) (copy enclosed). In response, the Office neither explained why it needed to rely on the Rule 131 Declaration, nor identified any objection to the assertion that MCGOVERN fails to teach "a filter that can search a web page." Having acceded to this factual assertion in the parent case, the Office is respectfully believed estopped from contesting it now.

9.3 MCGOVERN does not teach an "e-mail address extractor that can extract an e-mail address from said web page"

Recall the language of claim 1; it reads:

> 1. A system . . . comprising:
> a. a filter that can search a web page to identify in said web page the presence or absence of specifically defined professional qualifications, and
> b. an e-mail address extractor that can extract an e-mail address from said web page

MCGOVERN fails to teach "an e-mail address extractor that can extract an e-mail address from said web page." Rather, MCGOVERN discloses a system involving manually typing in (not automatically extracting) e-mail addresses. MCGOVERN says, "enter in the spaces provided on the screen display 220 the Internet e-mail address of the person to which the resume is to be sent." MCGOVERN at col. 17, lines 59-66. MCGOVERN requires the operator "enter" e-mail addresses, perhaps with the aid of an address book. *See* MCGOVERN at screen display 220. MCGOVERN does not disclose extracting e-mail addresses from a web page.

Similarly, MCGOVERN does not disclose a system involving getting an e-mail address - by extraction or otherwise - from a web page. MCGOVERN's addresses need to be individually sent to or input into the database. The OFFICE ACTION agrees with this; the OFFICE ACTION at page 3 explains, "McGovern *et al.* discloses a system in which job seekers voluntarily submit resumes to a company web site and which is subsequently stored in a company database (col. 17, lines 23-23)."

The OFFICE ACTION then says, however, "The system of McGovern et al. further discloses an e-mail address extractor (col. 18, lines 24-35) in which the company computer will extract an e-mail address from its database and use that address to send correspondence to the job applicant who submitted the resume." This factual assertion is both inapposite and incorrect.

This is inapposite because OFFICE ACTION says MCGOVERN teaches obtaining e-mail address data from a database, not obtaining e-mail address data from a web page.[1] The OFFICE ACTION fails to allege that MCGOVERN teaches "an e-mail address extractor that can extract an e-mail address from said web page."

The OFFICE ACTION is incorrect because the text cited by the OFFICE ACTION (MCGOVERN, col. 18, lines 24-35) does not teach extraction. The text says, "*a screen display 240 as shown in FIG. 35, with the e-mail address of the candidate automatically appearing in the 'To:' section.*" This does not teach extraction from a web page, nor extraction from anything else, nor mention "extraction" at all.

10 THE 112 SECOND PARAGRAPH REJECTIONS

Claims 9-12 and 16-19 stand rejected under 35 USC 112, second paragraph. The OFFICE ACTION argues that the terms "natural language screening" and "as many linking levels as desired" are vague.

These rejections *must* be reversed, because the Office has already found these terms statutory. The rejections *should* be reversed, because they are factually unsupported.

10.1 The rejections must be reversed because the Office has already conceded the disputed terms are not vague

The rejections must be reversed because the Office has already found the disputed terms statutory. The immediate application is a continuation of Stephen M. REUNING, U.S. LETTERS PATENT NO. 6,381,592 (copy enclosed). The '592 patent contains the claim term "natural

[1] *C.f.*: The term of art for obtaining data from a preexisting data structure or database is "retrieving," not "extracting."

language screening." This claim term is statutory, because it is recited in issued patent claims. Because this language was found statutory in the '592 patent, the Office cannot now object to it in the continuation application.

Furthermore, Applicant filed a PETITION TO MAKE SPECIAL based on infringement. The PETITION notes that the infringing system "uses advanced natural language screening technology." PETITION TO MAKE SPECIAL at 4, line 6-7 (15 Feb. 2000) (copy attached). In reviewing the PETITION, the Office reviewed "a rigid comparison of the alleged infringing device, product or method *with the claims of the application.*" DECISION ON PETITION TO MAKE SPECIAL ¶ 2 (22 Mar. 2000) (emphasis added) (copy attached). A "rigid comparison of the claims" requires, *de jure*, that the claims be clear. *E.g.,* In re Steele, 305 F.2d 859 (C.C.P.A. 1962) (claims cannot be compared to prior art references based on a speculative claim interpretation). Here, because the Office granted the PETITION, the Office must have found the claim language not vague.

10.2 The rejections are factually unsupported

The Office bears the burden of establishing a *prima facie* case that the disputed terms are vague. The OFFICE ACTION has not done this. To the contrary, the OFFICE ACTION explains the clear meaning of the disputed terms. In so arguing, the OFFICE ACTION establishes a *prima facie* case that the terms are clear.

The OFFICE ACTION says the phrase "as many linking levels as desired" means "encompass one level, multiple levels, or no levels at all." OFFICE ACTION at 2 (12 June 02). The OFFICE ACTION says this "is broad enough to allow for extraction of e-mail from zero linking levels." Id. at 3. This is correct. Similarly, the Office says that in natural language searching, "the keywords are natural language, the iterative search engine performs its query processing based on a processing of natural language." Id. at 3. This is correct. The OFFICE ACTION thus establishes a *prima facie* case that the disputed terms are clear – not vague.

Furthermore, the uncontroverted factual record in this case shows that the phrase "advanced natural language screening technology" is understood in the art. For example, the web-site for WebHire, Inc. says "It uses *advanced natural language screening technology* to filter out non-relevant information, while uncovering the resumes other research tools miss." *See*

PETITION TO MAKE SPECIAL at page 4, line 6-9 (italics added). This evidence shows the phrase is understood in the art. This evidence - the *only* on-point evidence of record - shows that the phrase is understood in the art.

Furthermore, as part of establishing a *prima facie* case, the Office bears the burden of proposing alternative language which would be more clear than the disputed term:

> In cases where a sound rejection on the basis of prior art which discloses the "heart" of the invention (as distinguished from prior art which merely meets the terms of the claims), secondary rejections on minor technical grounds should ordinarily not be made. Certain technical rejections (e.g. negative limitations, indefiniteness) should not be made where the examiner, recognizing the limitations of the English language, is not aware of an improved mode of definition.

MANUAL PATENT EXAM. PROC. § 707.07(g) (2001). Here, the OFFICE ACTION does not propose any "improved mode of definition." Because the Office has not even suggested an "improved mode," the indefiniteness rejection "should not be made." Id.

The OFFICE ACTION itself, and the only evidence of record, show that the claims are clear. The Section 112 rejections should thus be withdrawn.

11 COLLATERAL ESTOPPEL

The Office previously compared MCGOVERN to the Applicant, and conceded that MCGOVERN fails to teach either claim limitation. The Office previously examined the disputed claim language and found it allowable, Now, however, the Office seeks to reverse position. This is respectfully believed illegal because the Office is bound by its own prior decision. In re Lundberg and Zuschlag, 126 USPQ 412, 414 (CCPA 1960) (copy attached) ("patentability over the prior art is not reconsidered as a virgin problem. On the contrary, the prior decision stands, right or wrong, for all disputed issues there decided.").

Collateral estoppel[2] arises when an issue of fact is litigated to a final judgment, and that fact is essential to the final judgment. Collateral estoppel applies to Patent Office proceedings. The Supreme Court says so:

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[2] Collateral estoppel, also called "issue preclusion," is a species of "*res judicata*."

> While the rules that govern the finality and conclusiveness of adjudications at the common law do not apply, in the strict sense, to administrative or quasi-judicial action in the Executive Departments of Government, yet in administrative action, as well as in judicial proceeding, it is both expedient and necessary that there should be an end of controversy. Sometimes, the element of finality is inherent in the nature of the action taken; as, for example, when letters patent have been granted, they may not be recalled, and the rights of the parties holding them again investigated. *Where rights have become vested as a result of legitimate executive action, such action is necessarily final*, and it is not competent thereafter for executive action to divest them, either by way of a review of the proceedings or by any new proceedings instituted with that view. Especially is this principle applicable to the proceedings of the Patent Office, which are so nearly akin to judicial proceedings as to be most appropriately designated as quasi-judicial.

Overland Motor Co. v. Packard Motor Co., 274 U.S. 417, 421 (1927) (emphasis added); *accord,* Texas Instr. v. Cypress Semiconductor Corp., 90 F.3d 1558, 1568 (Fed. Cir. 1996). Collateral estoppel prohibits the Office from re-litigating factual issues which have already been decided. Collateral estoppel is thus "*an absolute bar* to relitigation, not only of those matters actually litigated in the prior suit, but also any other matter which might have been acted upon in the prior suit." Schwartz, S.D., *Res Judicata As Applied in Patent Office Prosecution*, 159 J. PAT. OFF. SOC. 637, 638 (1967).

Here, the Patent Office has already found that MCGOVERN fails to teach either claim element. That factual finding was essential to the final judgment (the decision to grant the Applicant's parent patent). Thus, there is an absolute bar prohibiting the Office from contesting its own earlier finding.

This result is good policy. Forcing Applicant to repeatedly litigate the same factual issue is a "misallocation of resources." Blonder-Tongue, Inc. v. Univ. of Illinois Foundation, 169 USPQ 513, 519 (U.S. 1971). Permitting the Office to repeatedly dispute the same issue "reflects either the aura of [a] gaming table or 'lack of discipline and of disinterestedness' on the part of the [Patent Office]." Id. (noting that collateral estoppel is for "the prevention of harassment" of a party). Here, the claimed subject matter - continued from the parent application - has been subject to at least ***six*** OFFICE ACTIONS since the original filing. This is a waste of resources.

12 SUMMARY

The Issues Presented in this case should be resolved as follows:

1) Issuing a patent constitutes a finding by the Office that the claim terms there used are statutory, if copied into a continuation application.
2) Reviewing a PETITION TO MAKE SPECIAL based on "rigidly comparing" claims to an allegedly infringing device, is a finding that the claims are clear enough to be statutory.
3) Rejecting a claim over prior art is a concession that the claim is clear enough to compare to the prior art, and therefore is a finding that the claim is clear enough to be statutory.
4) Where the OFFICE ACTION does not propose any "improved mode of definition" for the disputed claim term, a claim cannot be rejected under Section 112, second paragraph.
5) The OFFICE ACTION in this case (i) has not established a *prima facie* case that the claim terms "advanced natural language screening technology" and "as many linking levels as desired" are vague; and (ii) has established a *prima facie* case that the claim terms "advanced natural language screening technology" and "as many linking levels as desired" are statutory.
6) Issuing a NOTICE OF ALLOWANCE reciting specific factual findings precludes the Office from later contesting those facts.
7) MCGOVERN does not teach "a filter that can search a web page to identify in said web page the presence or absence of specifically defined professional qualifications." MCGOVERN does not teach "an e-mail address extractor that can extract an e-mail address from said web page."
8) Applicant antedates MCGOVERN.

All pending rejections must therefore be withdrawn.

Applicant notes this application was filed in 1996. Since that time, the prosecution has entailed perhaps half a dozen OFFICE ACTIONS, reviewing several dozen patent and non-patent references. This case will not benefit from further examination nor other Office delay.

A NOTICE OF APPEAL; and a FEE TRANSMITTAL FORM with the appropriate fees having been filed previously, please find enclosed (i) two additional copies of this APPEAL BRIEF.

Respectfully submitted,

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Enclosures :
- Robert J. MCGOVERN *et al.*, U. S. LETTERS PATENT NO. 6,370,510 (9 Apr. 2002)
- Stephen Michael REUNING, U.S. LETTERS PATENT NO. 6,381,592 (30 Apr. 2002)
- RULE 1.131 DECLARATION (24 July 2000)
- PRELIMINARY AMENDMENT (24 July 2000)
- PETITION TO MAKE SPECIAL (15 Feb. 2000)
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- NOTICE OF ALLOWANCE (29 June 2001)
- In re Lundberg and Zuschlag, 126 USPQ 412 (C.C.P.A. 1960)
- Schwartz, S.D., *Res Judicata As Applied in Patent Office*, 159 J. PAT. OFF. SOC. 637 (1967)

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13 CLAIMS ON APPEAL

CLAIMS

I claim:

1. A system for locating an individual with specifically defined professional qualifications, the system comprising:

a. a filter that can search a web page to identify in said web page the presence or absence of specifically defined professional qualifications, and

b. an e-mail address extractor that can extract an e-mail address from said web page.

2. The system of claim 1, wherein said filter can sort a plurality of web pages and calculate a score for each said web page.

3. The system of claim 2, further comprising:

c. means for sending an e-mail to said extracted e-mail address.

4. The system of claim 3, wherein said filter generates a score for said web page, and wherein said means for sending e-mail automatically sends an e-mail to said extracted e-mail address if said score for said web page satisfies a predetermined threshold value.

5. The system of claim 4, wherein said e-mail comprises data on a job opportunity.

6. A method for locating an individual with a specifically defined professional qualification, the method comprising:

a. locating a web page which contains text identifying said professional qualification;

b. for web pages containing said text identifying said professional qualification, extracting from said web page an e-mail address.

7. The method of claim 6, further comprising:

c. sending an e-mail to said extracted e-mail address.

8. The method of claim 7, wherein said e-mail comprises data on a job opportunity.

9. The method of claim 8, wherein said e-mail address extracting further comprises extracting e-mail addresses from linked web pages, to as many linking levels as desired.

10. The method of claim 9, wherein said text identifying said professional qualification comprises a keyword or Boolean combination of keywords.

11. The method of claim 10, further comprising screening said web pages using advanced natural language screening technology.

12. The method of claim 11, wherein said advanced natural language screening technology comprises rules to identify resumes.

13. A system for locating an individual with a specifically defined professional qualification, the system comprising:

a. a web page locator which can locate a web page containing text identifying said professional qualification;

b. an e-mail address extractor.

14. The system of claim 13, further comprising:

c. means for sending an e-mail to an extracted e-mail address.

15. The system of claim 14, wherein said e-mail comprises data on a job opportunity.

16. The system of claim 15, wherein said e-mail address extractor can extract e-mail addresses from linked web pages, to as many linking levels as desired.

17. The system of claim 16, wherein said text identifying said professional qualification comprises a keyword or Boolean combination of keywords.

18. The method of claim 17, further comprising screening said web pages using advanced natural language screening technology.

19. The method of claim 18, wherein said advanced natural language screening technology comprises rules to identify resumes.

US006370510B1

(12) **United States Patent**
McGovern et al.

(10) **Patent No.: US 6,370,510 B1**
(45) **Date of Patent: *Apr. 9, 2002**

(54) **EMPLOYMENT RECRUITING SYSTEM AND METHOD USING A COMPUTER NETWORK FOR POSTING JOB OPENINGS AND WHICH PROVIDES FOR AUTOMATIC PERIODIC SEARCHING OF THE POSTED JOB OPENINGS**

(75) Inventors: **Robert J. McGovern**, Potomac, MD (US); **James A. Winchester, Jr.**, Reston, VA (US); **Andrew B. Evans**, Alderson, WV (US); **Brian E. Farmer**; **Jennie A. Koffman**, both of Reston, VA (US); **Aaron P. Walker**, Vienna, VA (US)

(73) Assignee: **CareerBuilder, Inc.**, Reston, VA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

This patent is subject to a terminal disclaimer.

(21) Appl. No.: **09/389,752**

(22) Filed: **Sep. 7, 1999**

Related U.S. Application Data

(63) Continuation of application No. 08/853,376, filed on May 8, 1997, now Pat. No. 5,978,768.

(51) **Int. Cl.**[7] **G06F 17/60**
(52) **U.S. Cl.** **705/1**
(58) **Field of Search** 705/2, 10, 26, 705/27; 707/10, 104; 709/201, 203, 219

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Website address www.monsterboard.com.
Website address www.occ.com.
Website address www.bestrecruit.com.

(List continued on next page.)

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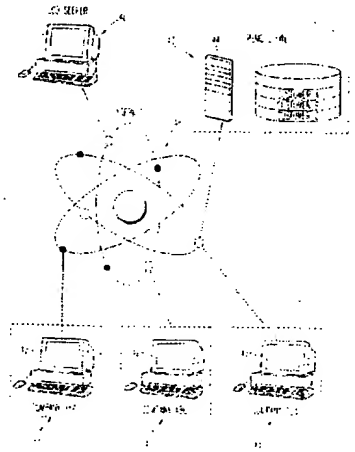
(57) **ABSTRACT**

A method and apparatus for providing an interactive computer-driven employment recruiting service. The method and apparatus enables an employer to advertise available positions on the Internet, directly receive resumes from prospective candidates, and efficiently organize and screen the received resumes. The method and apparatus further is capable of monitoring employment advertisements for a job seeker and automatically notifying the job seeker when a position for which the job seeker is suitable becomes available. The method and apparatus further enables a plurality of companies to advertise job positions at a single location accessible via the Internet by a job seeker, and enables the job seeker to communicate directly with a company via the Internet if the job seeker is interested in exploring further information pertaining to an available position at that company.

12 Claims, 31 Drawing Sheets



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Wedsite address www.careerweb.com.
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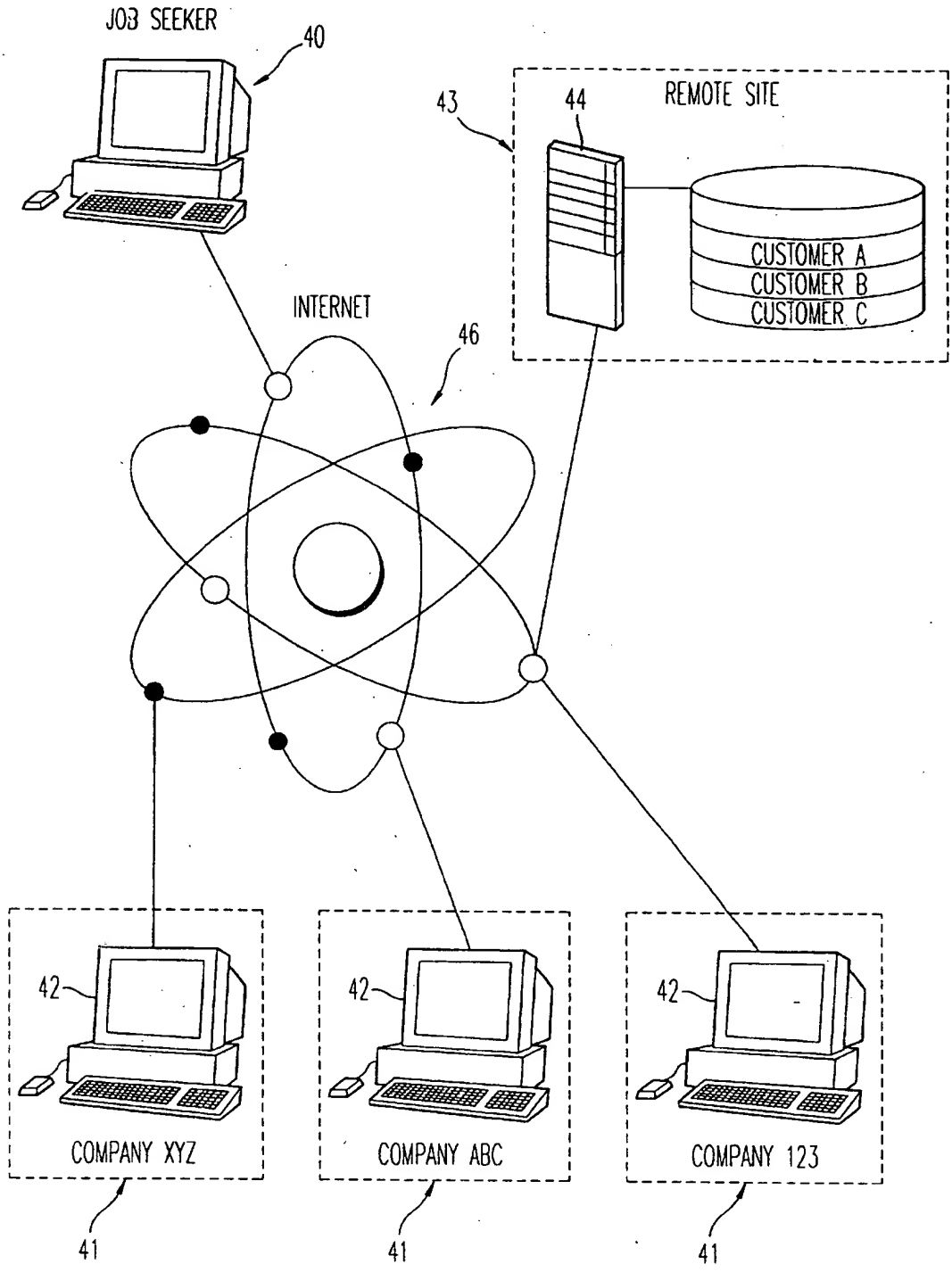

JOB SEEKER
40
43
44
REMOTE SITE
CUSTOMER A
CUSTOMER B
CUSTOMER C
INTERNET
46
42
42
42
COMPANY XYZ
COMPANY ABC
COMPANY 123
41
41
41

FIG. 1

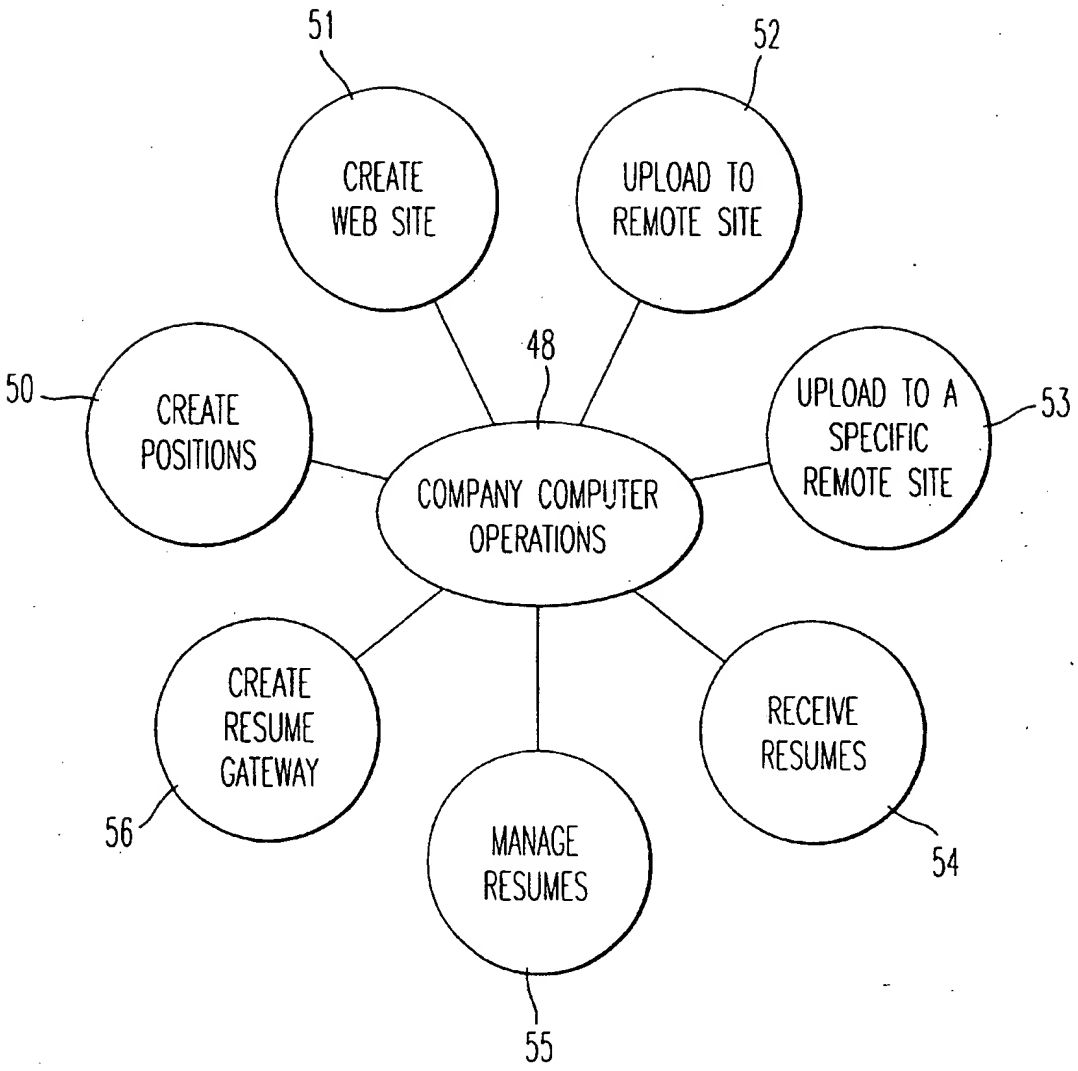
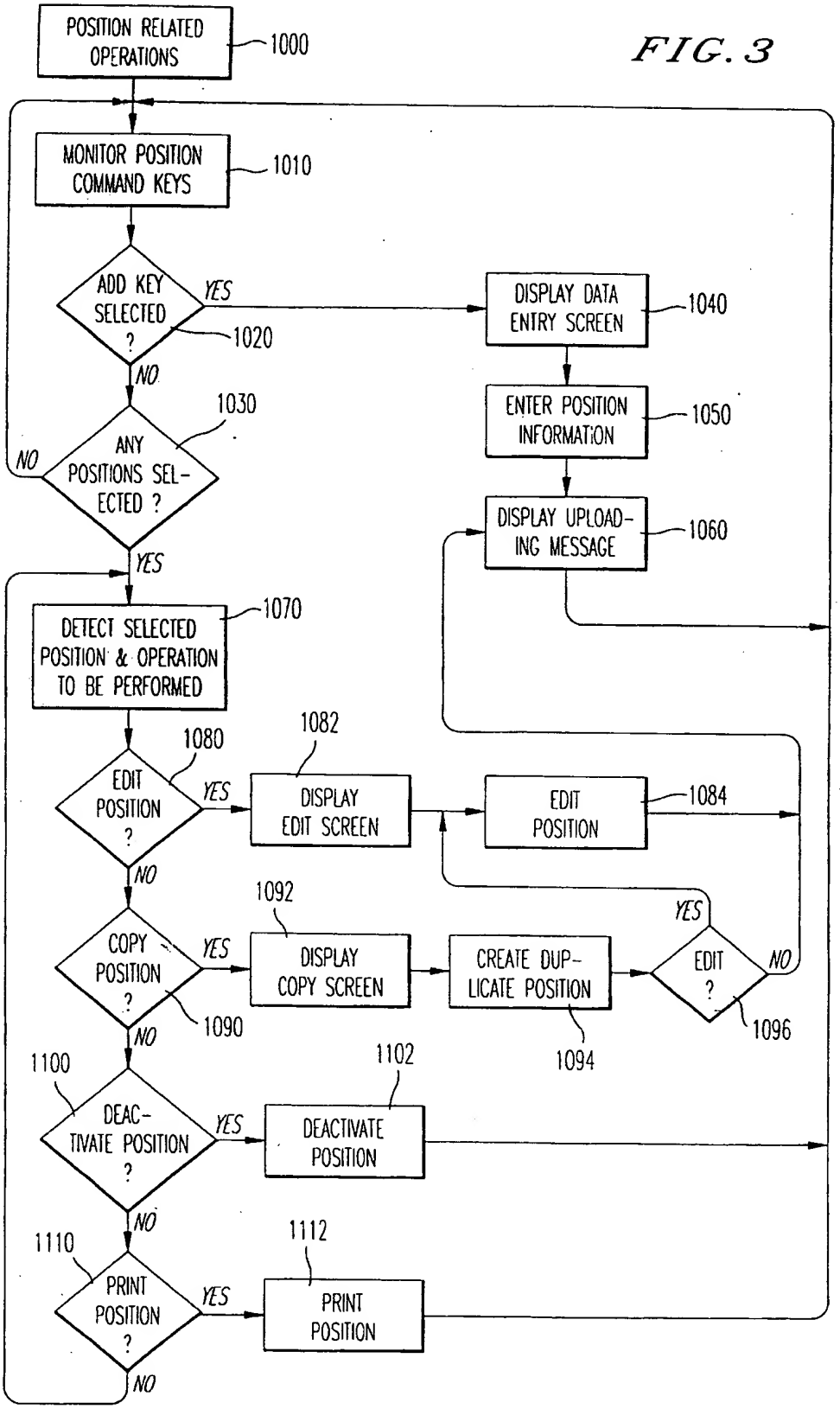

51
52
CREATE WEB SITE
UPLOAD TO REMOTE SITE
48
50
CREATE POSITIONS
COMPANY COMPUTER OPERATIONS
UPLOAD TO A SPECIFIC REMOTE SITE
53
CREATE RESUME GATEWAY
56
MANAGE RESUMES
55
RECEIVE RESUMES
54

FIG. 2

FIG. 3


POSITION RELATED OPERATIONS
1000
MONITOR POSITION COMMAND KEYS
1010
ADD KEY SELECTED ?
1020
YES
NO
DISPLAY DATA ENTRY SCREEN
1040
ENTER POSITION INFORMATION
1050
DISPLAY UPLOADING MESSAGE
1060
1030
ANY POSITIONS SELECTED ?
NO
YES
DETECT SELECTED POSITION & OPERATION TO BE PERFORMED
1070
1080
EDIT POSITION ?
1082
DISPLAY EDIT SCREEN
EDIT POSITION
1084
1092
COPY POSITION ?
DISPLAY COPY SCREEN
CREATE DUPLICATE POSITION
EDIT ?
1090
1094
1096
1100
DEACTIVATE POSITION ?
1102
DEACTIVATE POSITION
1110
PRINT POSITION ?
1112
PRINT POSITION

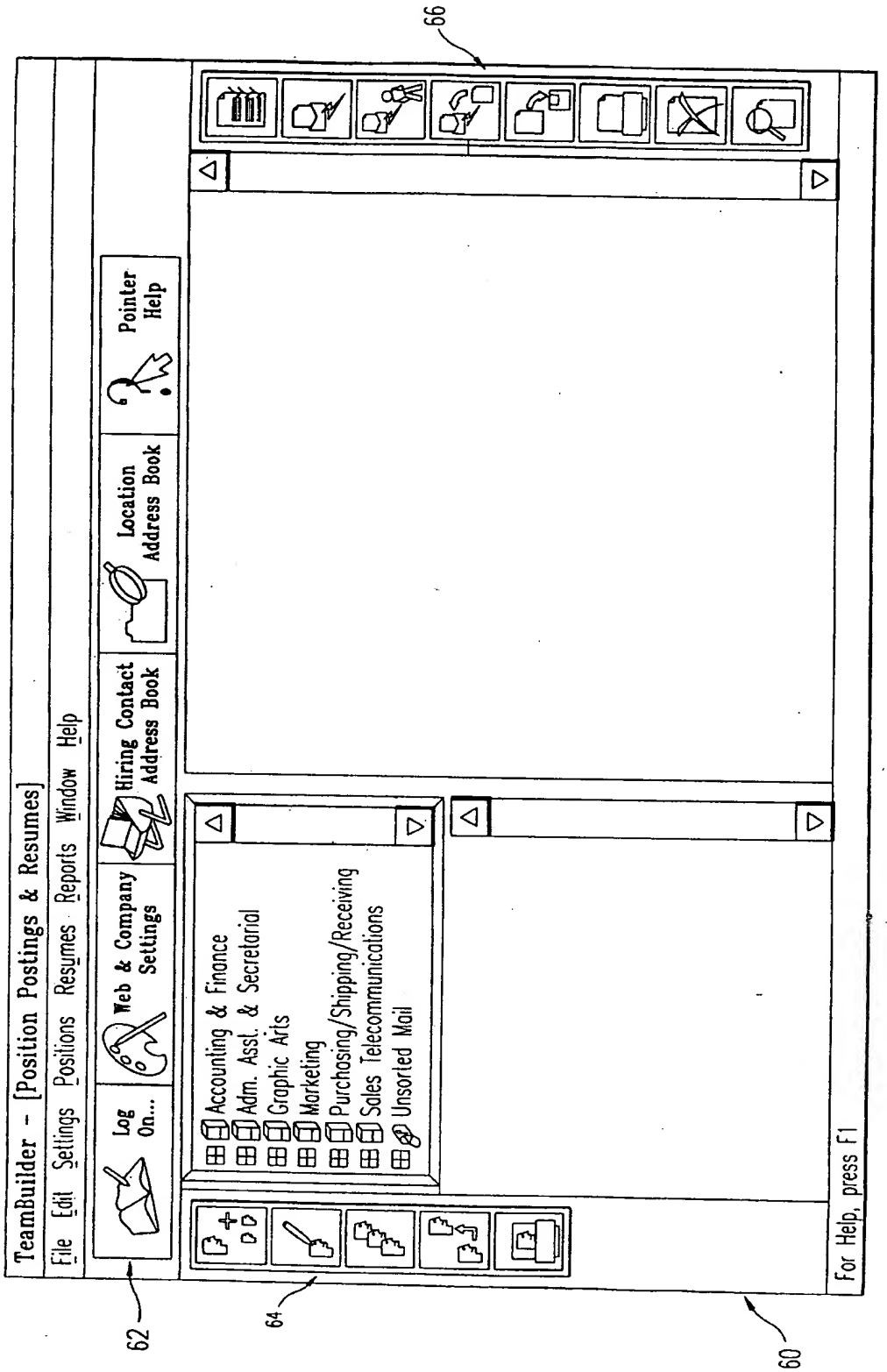

66
TeamBuilder - [Position Postings & Resumes]
File Edit Settings Positions Resumes Reports Window Help
Log On...
Web & Company Settings
Hiring Contact Address Book
Location Address Book
Pointer Help
Accounting & Finance
Adm. Asst. & Secretarial
Graphic Arts
Marketing
Purchasing/Shipping/Receiving
Sales Telecommunications
Unsorted Mail
For Help, press F1
62
64
60

FIG. 4

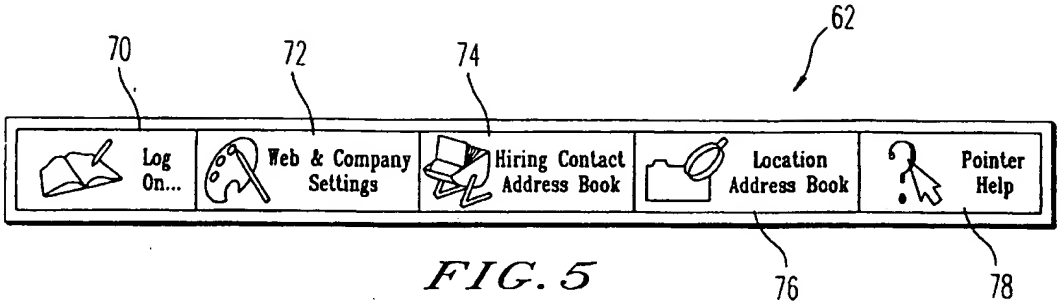


FIG. 5

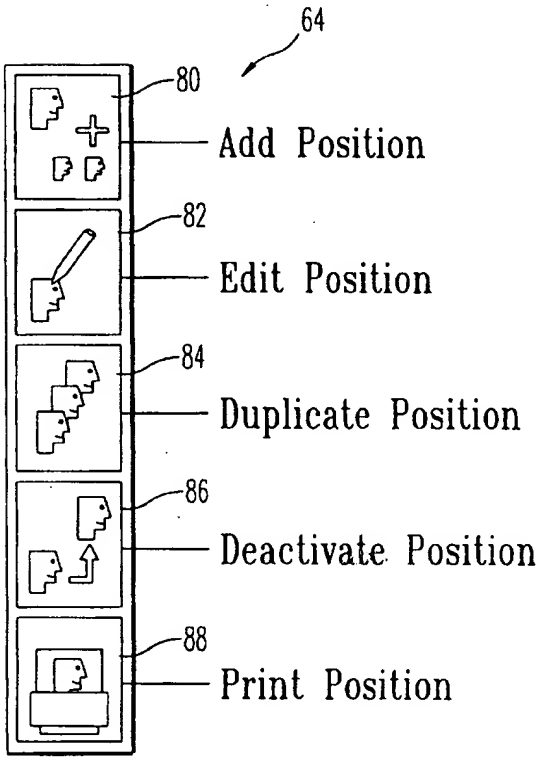


FIG. 6

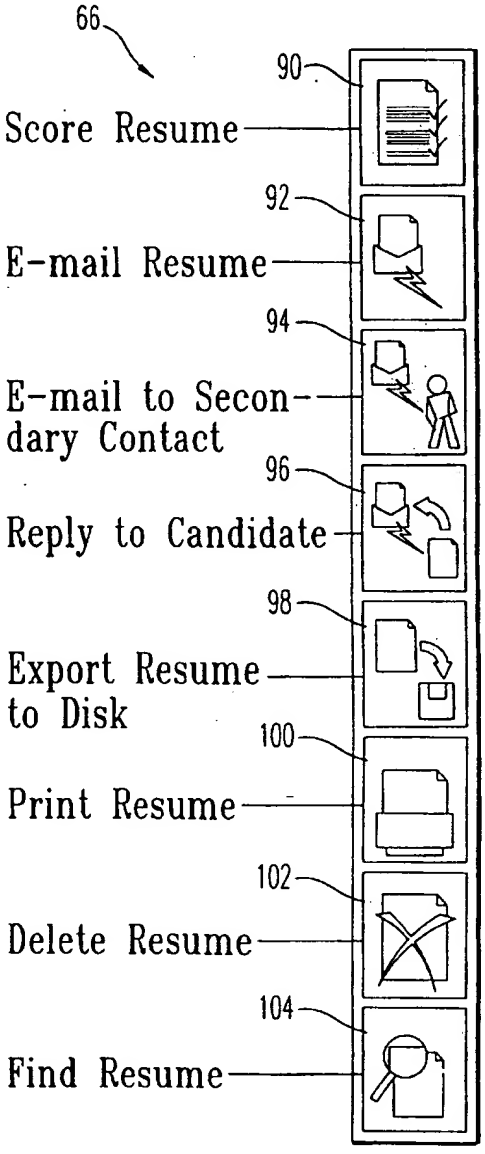


FIG. 7

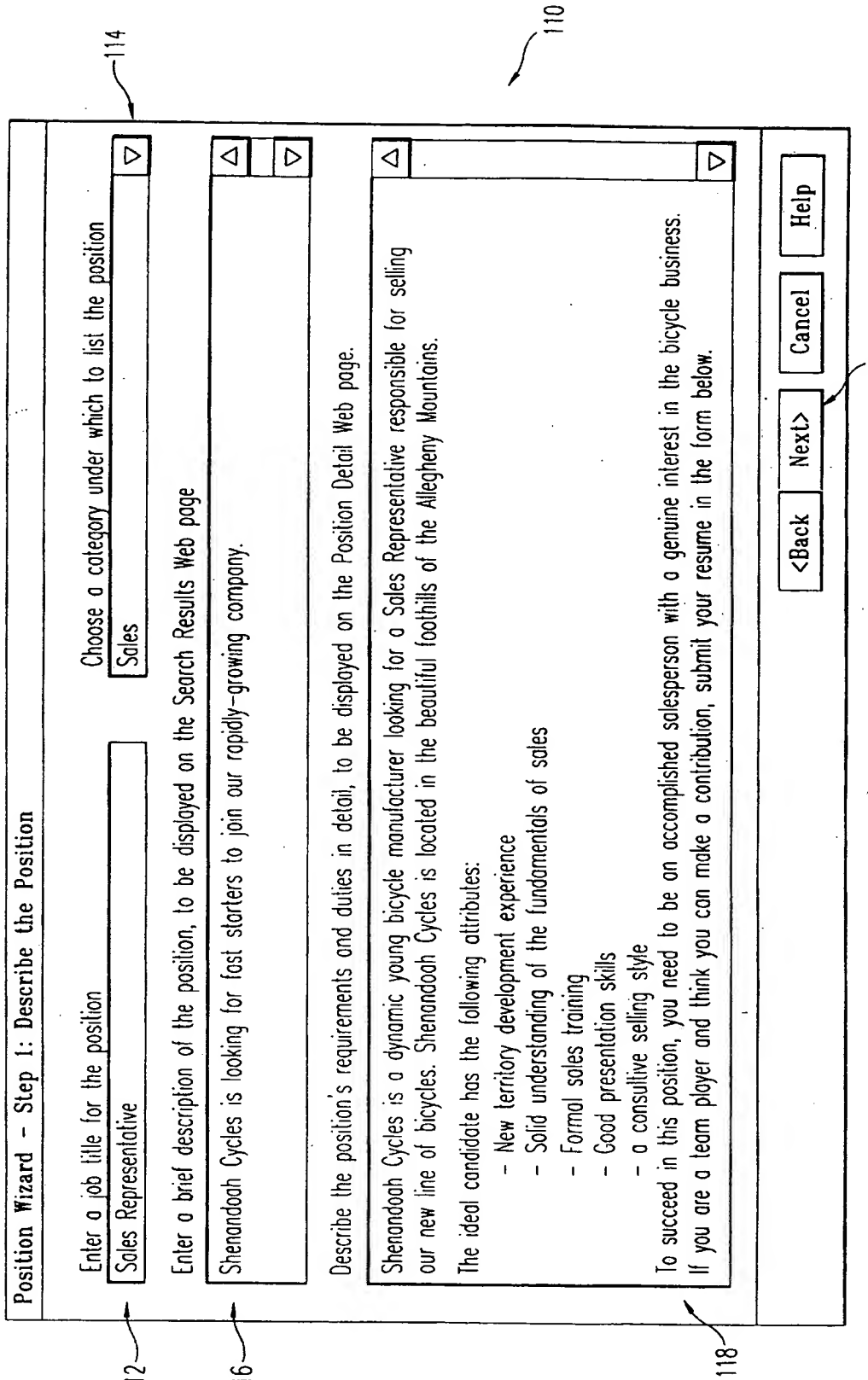

Position Wizard - Step 1: Describe the Position
Enter a job title for the position
Sales Representative
Choose a category under which to list the position
Sales
Enter a brief description of the position, to be displayed on the Search Results Web page
Shenandoah Cycles is looking for fast starters to join our rapidly-growing company.
Describe the position's requirements and duties in detail, to be displayed on the Position Detail Web page.
Shenandoah Cycles is a dynamic young bicycle manufacturer looking for a Sales Representative responsible for selling our new line of bicycles. Shenandoah Cycles is located in the beautiful foothills of the Allegheny Mountains.
The ideal candidate has the following attributes:
- New territory development experience
- Solid understanding of the fundamentals of sales
- Formal sales training
- Good presentation skills
- a consultive selling style
To succeed in this position, you need to be an accomplished salesperson with a genuine interest in the bicycle business. If you are a team player and think you can make a contribution, submit your resume in the form below.
<Back
Next>
Cancel
Help
110
112
114
116
118
120

FIG. 8

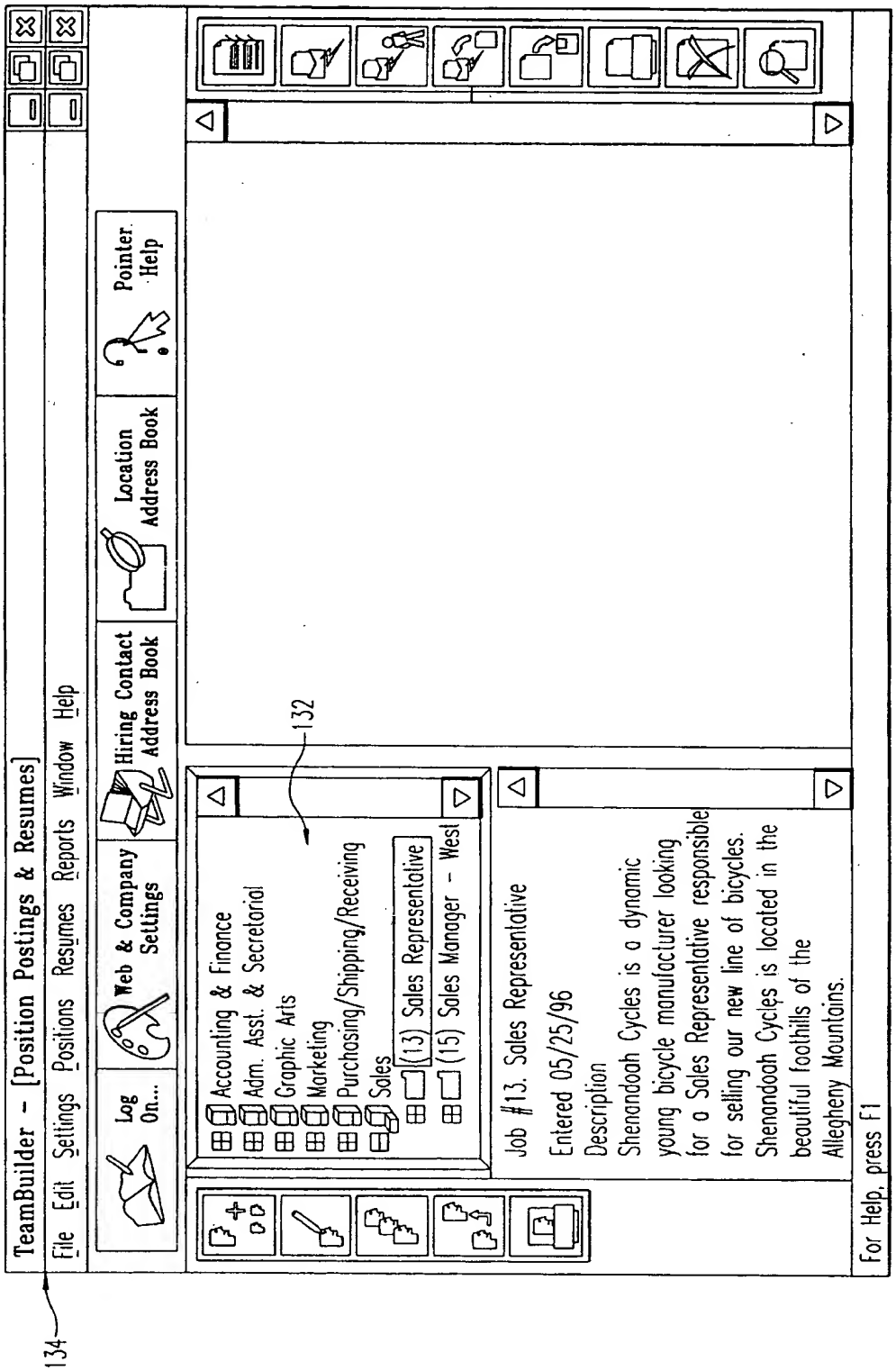
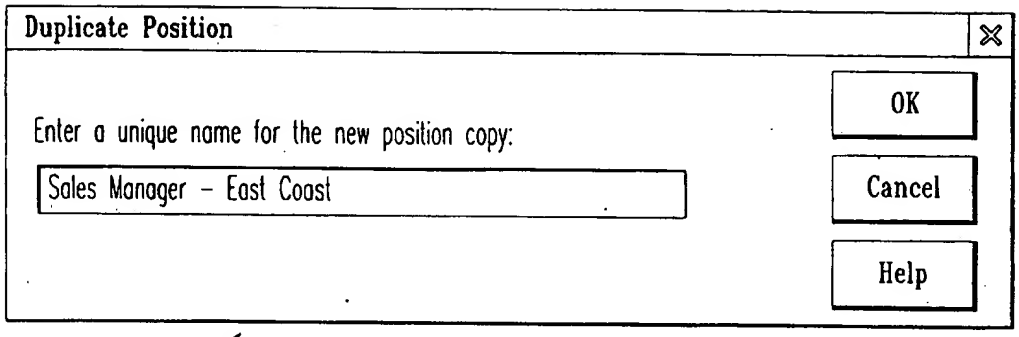
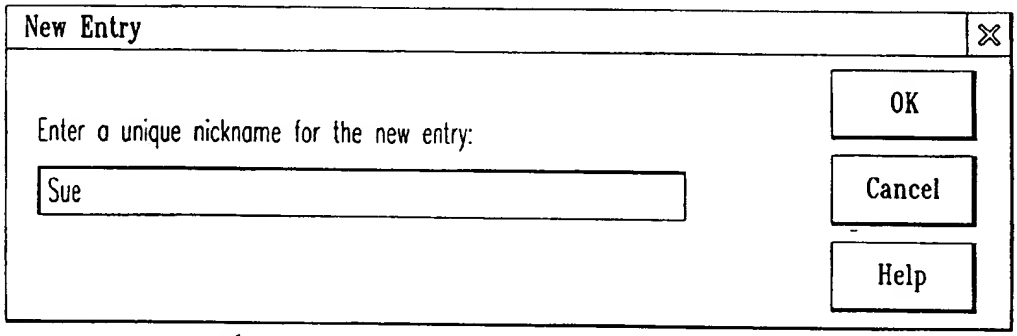

TeamBuilder - [Position Postings & Resumes]
File Edit Settings Positions Resumes Reports Window Help
Log On...
Web & Company Settings
Hiring Contact Address Book
Location Address Book
Pointer Help
Accounting & Finance
Adm. Asst. & Secretorial
Graphic Arts
Marketing
Purchasing/Shipping/Receiving
Sales
(13) Sales Representative
(15) Sales Manager - West
Job #13. Sales Representative
Entered 05/25/96
Description
Shenandoah Cycles is a dynamic young bicycle manufacturer looking for a Sales Representative responsible for selling our new line of bicycles. Shenandoah Cycles is located in the beautiful foothills of the Allegheny Mountains.
For Help, press F1
132
130
134

FIG. 9



136

FIG. 10



144

FIG. 13

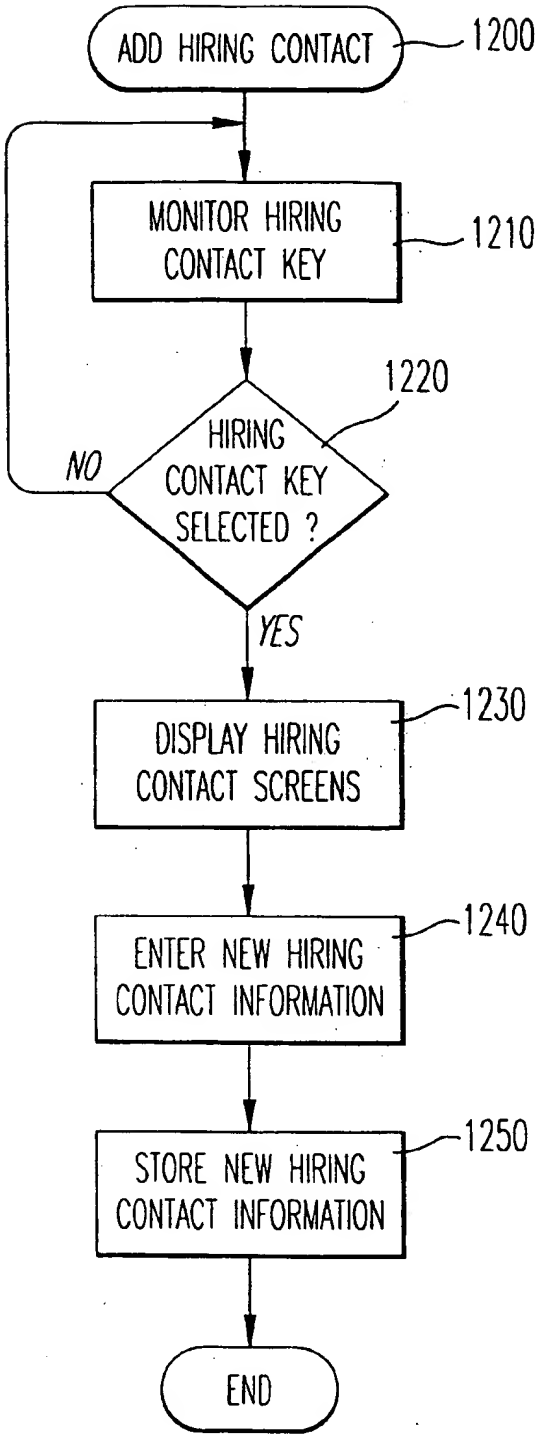

ADD HIRING CONTACT
1200
MONITOR HIRING CONTACT KEY
1210
1220
HIRING CONTACT KEY SELECTED ?
NO
YES
DISPLAY HIRING CONTACT SCREENS
1230
ENTER NEW HIRING CONTACT INFORMATION
1240
STORE NEW HIRING CONTACT INFORMATION
1250
END

FIG. 11

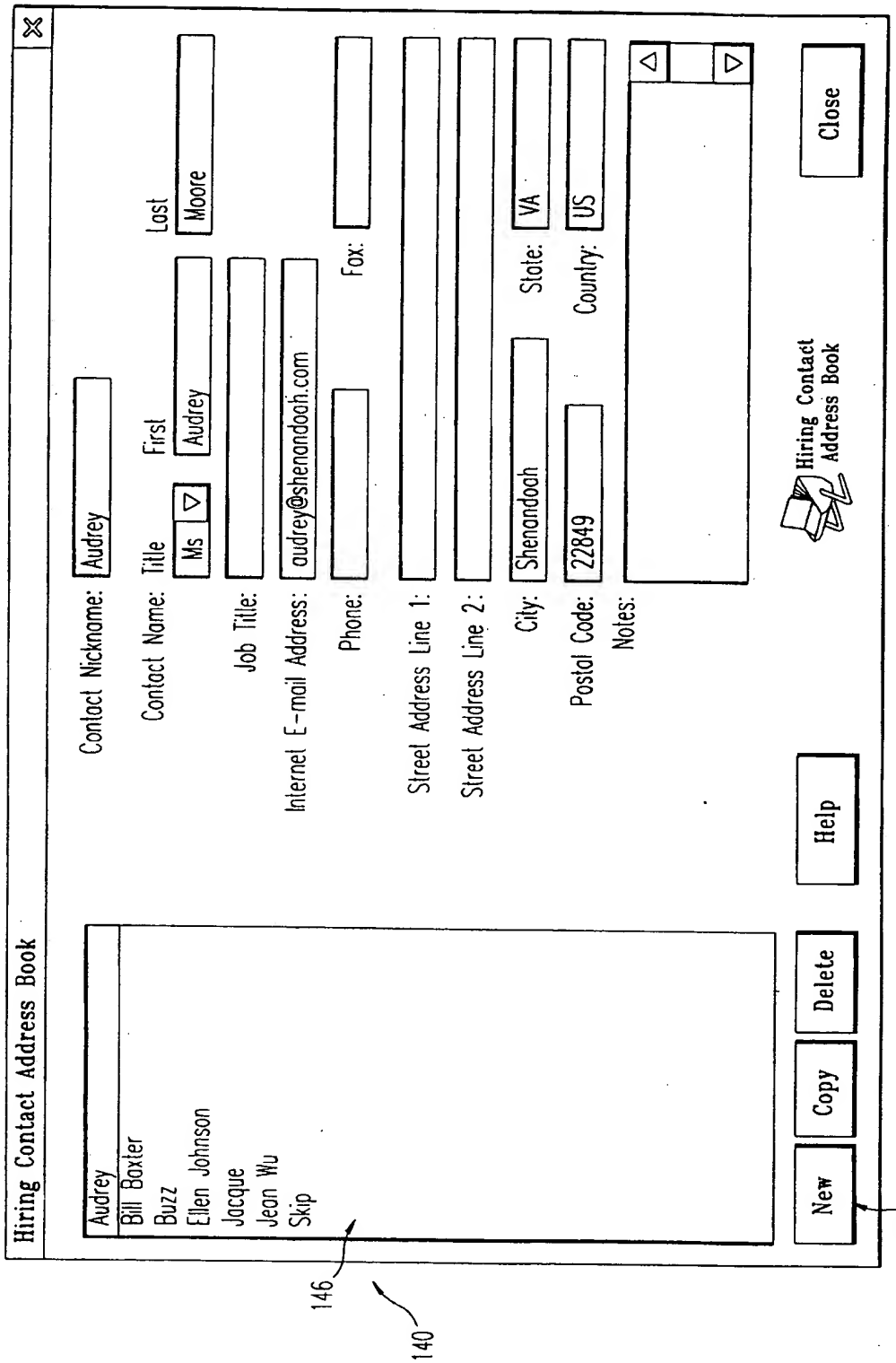

Hiring Contact Address Book
Audrey
Bill Baxter
Buzz
Ellen Johnson
Jacque
Jean Wu
Skip
New
Copy
Delete
Help
Close
Contact Nickname:
Audrey
Contact Name:
Title
Ms
First
Audrey
Last
Moore
Job Title:
Internet E-mail Address:
audrey@shenandoah.com
Phone:
Fax:
Street Address Line 1:
Street Address Line 2:
City:
Shenandoah
State:
VA
Postal Code:
22849
Country:
US
Notes:
Hiring Contact Address Book
146
140
142

FIG. 12

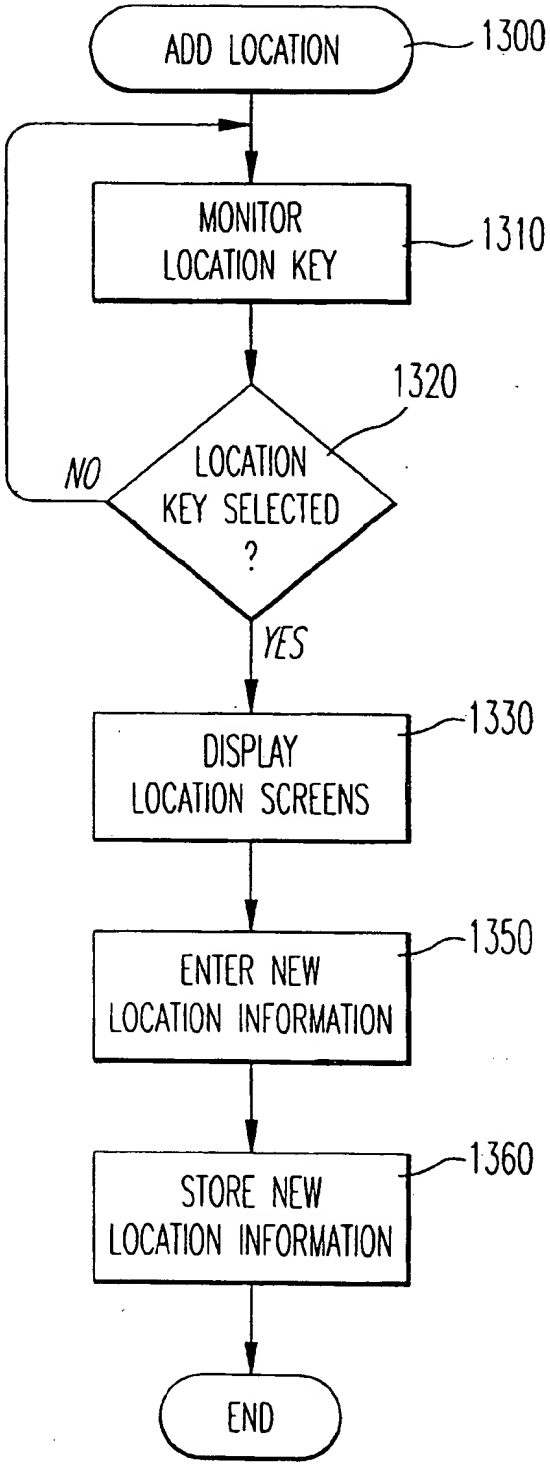

ADD LOCATION
1300
MONITOR LOCATION KEY
1310
1320
LOCATION KEY SELECTED ?
NO
YES
DISPLAY LOCATION SCREENS
1330
ENTER NEW LOCATION INFORMATION
1350
STORE NEW LOCATION INFORMATION
1360
END

FIG. 14

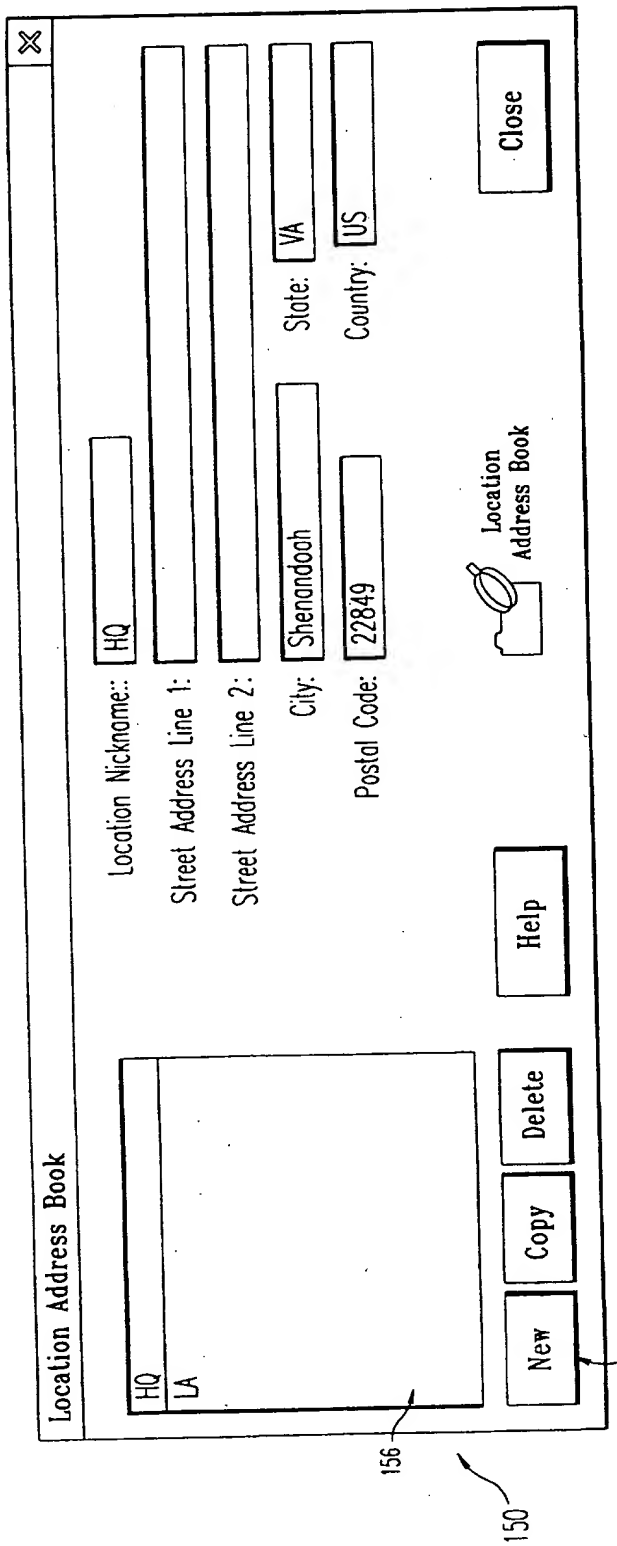

Location Address Book
HQ
LA
Location Nickname:: HQ
Street Address Line 1:
Street Address Line 2:
City: Shenandoah
State: VA
Postal Code: 22849
Country: US
Location Address Book
Close
Help
New
Copy
Delete
150
152
156

FIG. 15

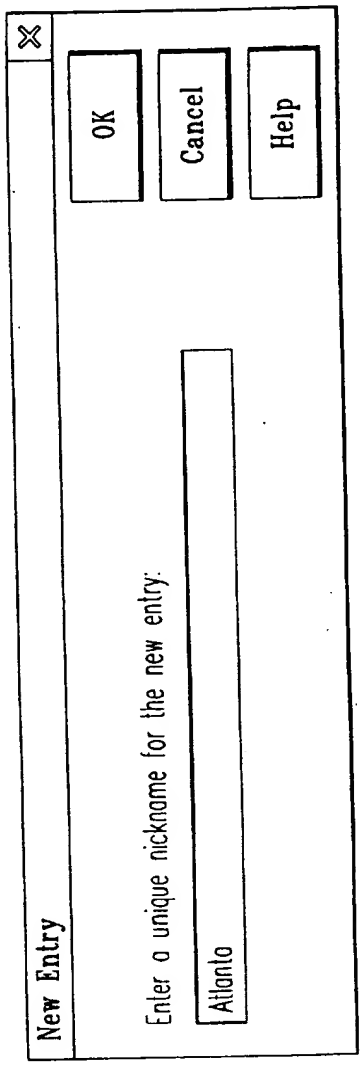

New Entry
Enter a unique nickname for the new entry:
Atlanta
OK
Cancel
Help
154

FIG. 16

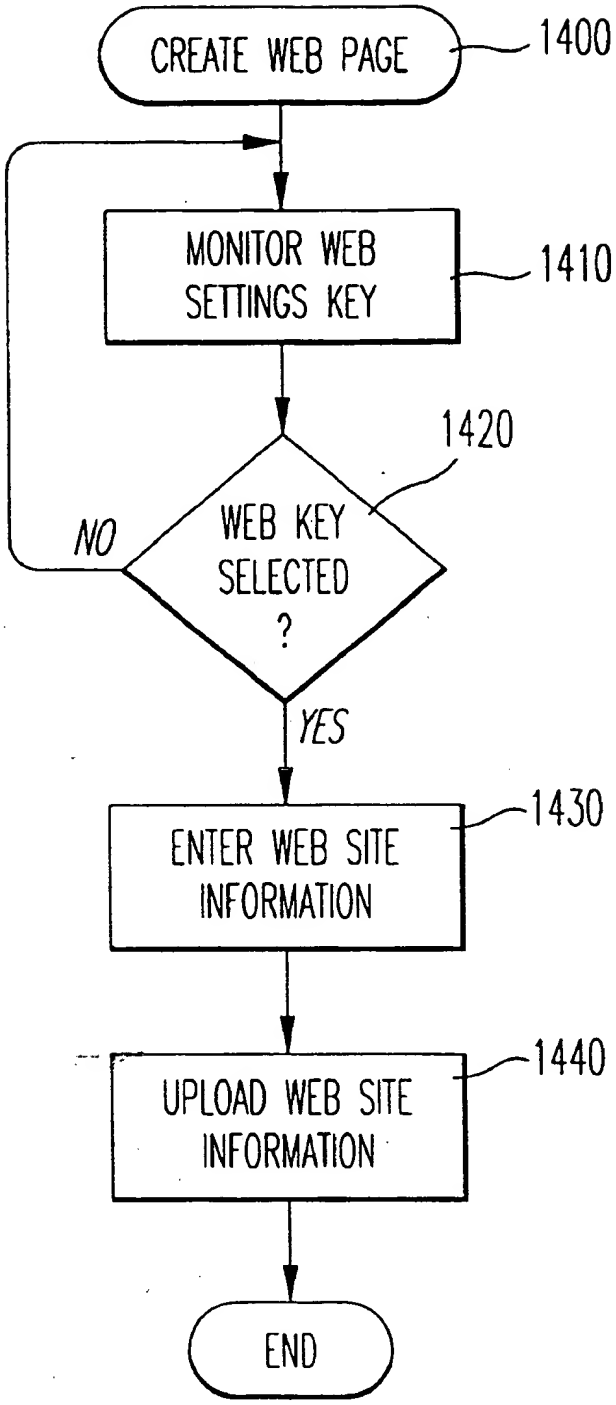

CREATE WEB PAGE
1400
MONITOR WEB SETTINGS KEY
1410
1420
WEB KEY SELECTED ?
NO
YES
ENTER WEB SITE INFORMATION
1430
UPLOAD WEB SITE INFORMATION
1440
END

FIG. 17

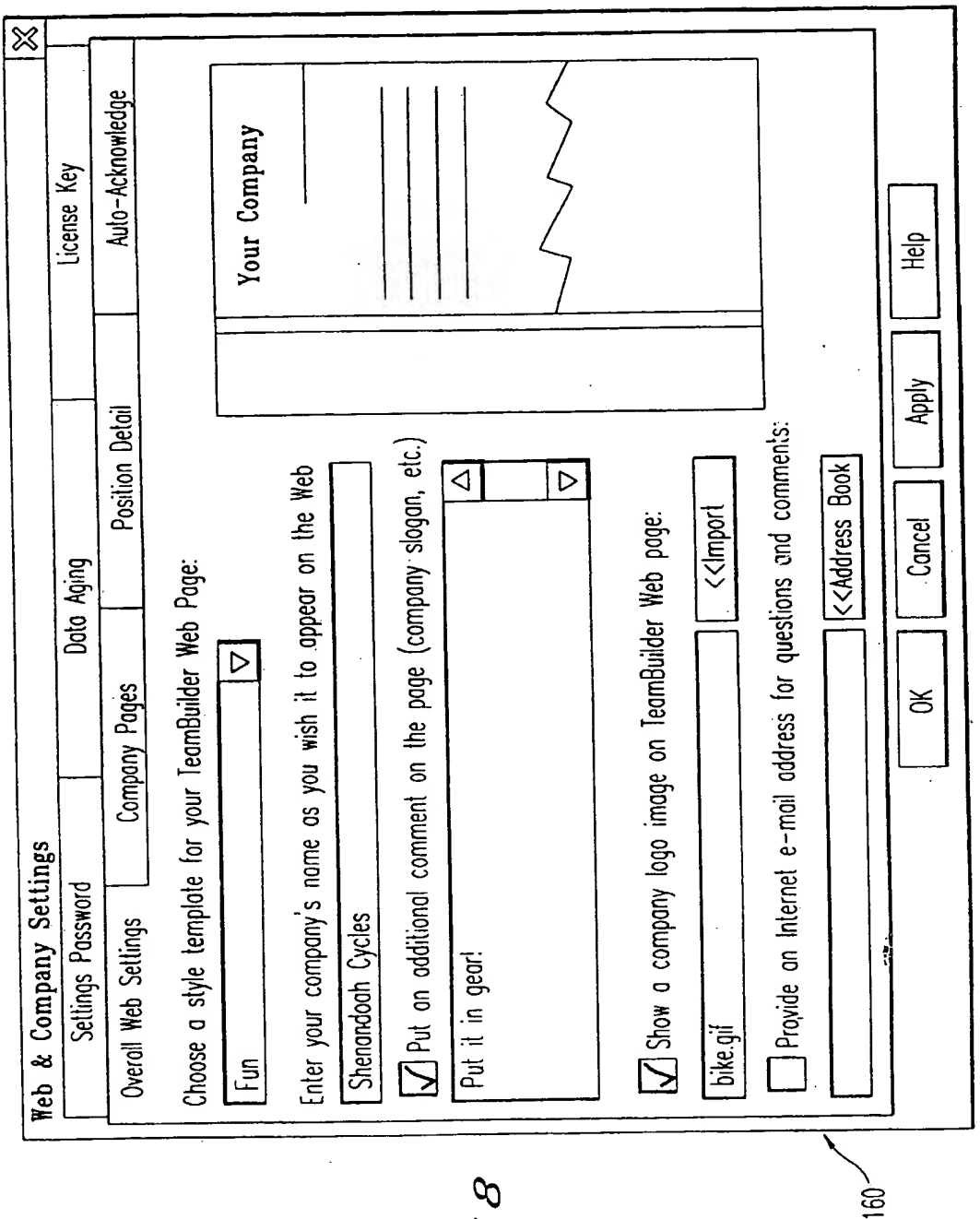

Web & Company Settings
Settings Password
Data Aging
License Key
Overall Web Settings
Company Pages
Position Detail
Auto-Acknowledge
Your Company
Choose a style template for your TeamBuilder Web Page:
Fun
Enter your company's name as you wish it to appear on the Web
Shenandoah Cycles
Put an additional comment on the page (company slogan, etc.)
Put it in gear!
Show a company logo image on TeamBuilder Web page:
bike.gif
<<Import
Provide an Internet e-mail address for questions and comments:
<<Address Book
OK
Cancel
Apply
Help
160

FIG. 18

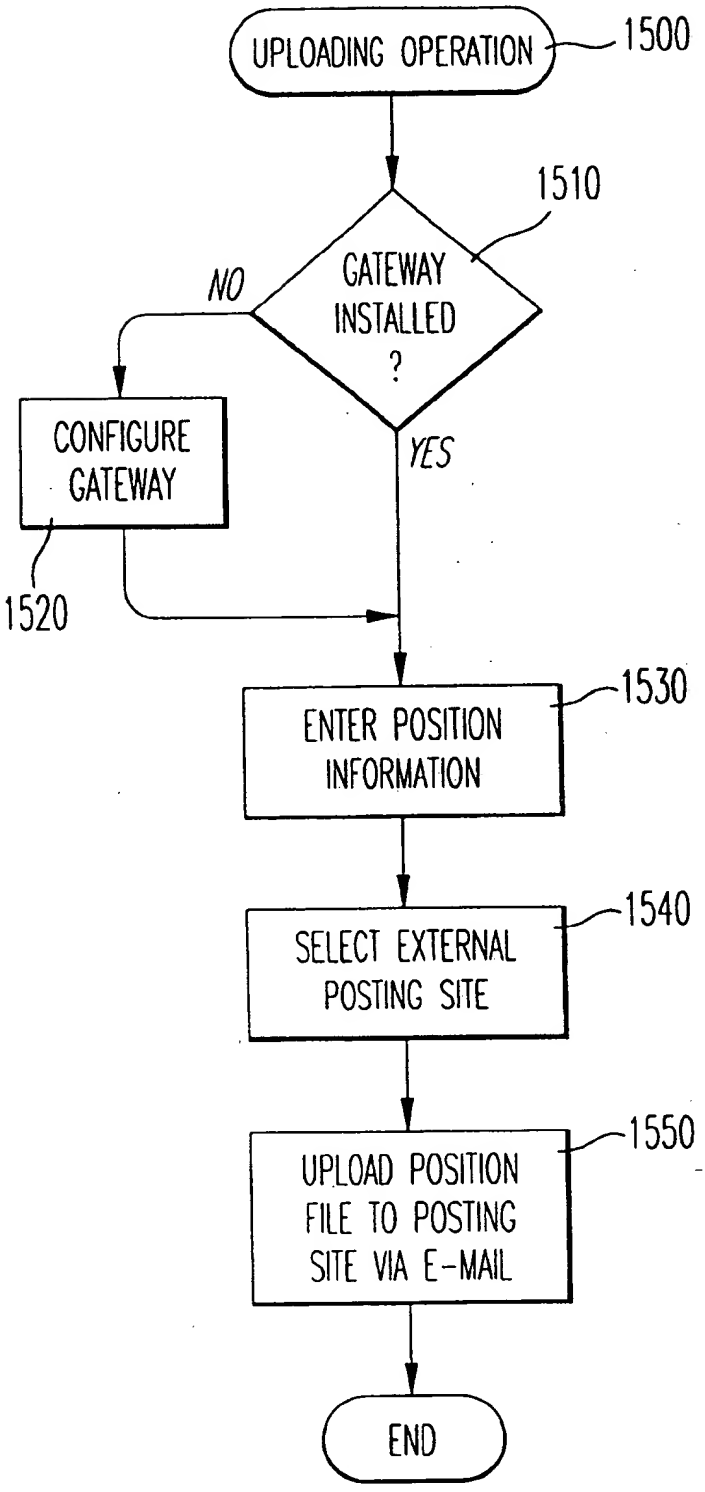

UPLOADING OPERATION
1500
1510
GATEWAY INSTALLED ?
NO
YES
CONFIGURE GATEWAY
1520
ENTER POSITION INFORMATION
1530
SELECT EXTERNAL POSTING SITE
1540
UPLOAD POSITION FILE TO POSTING SITE VIA E-MAIL
1550
END

FIG. 19

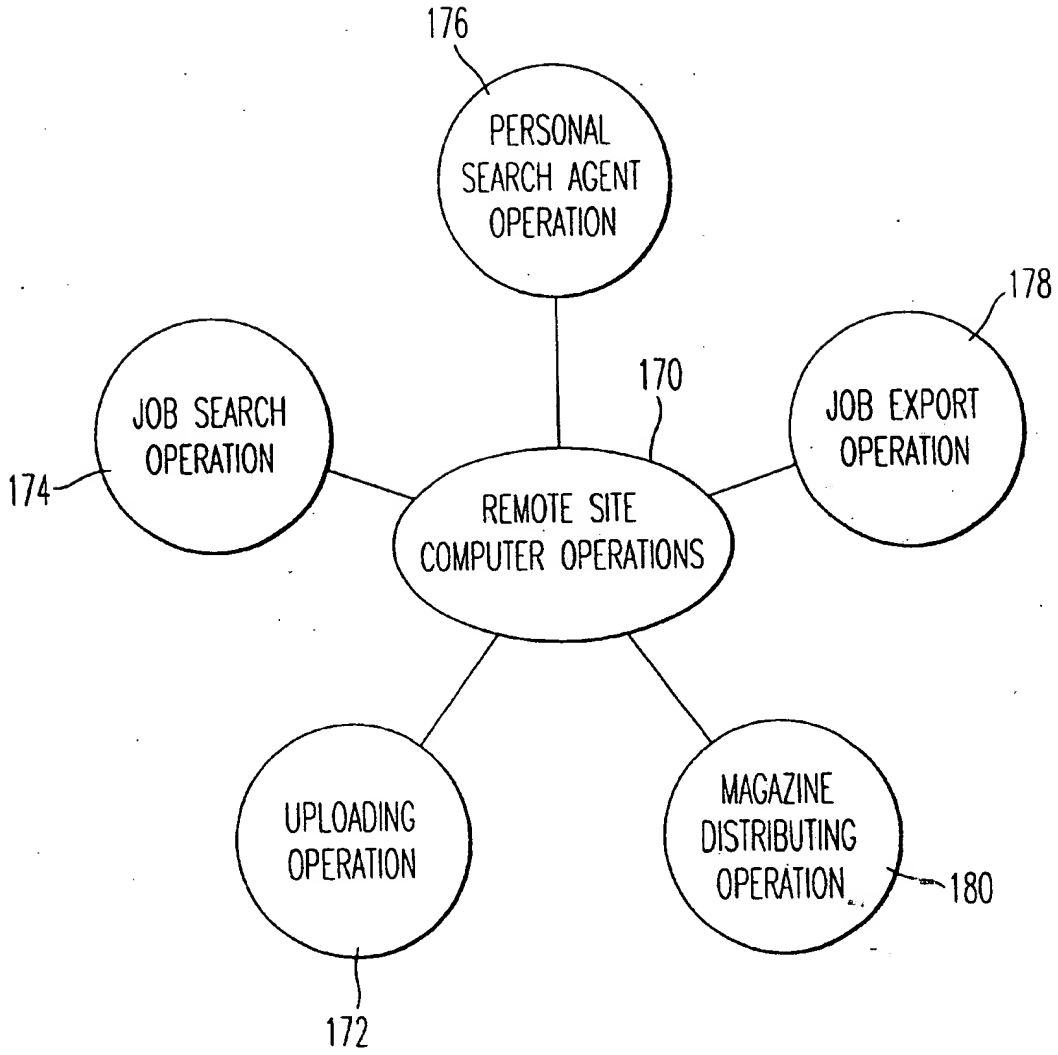

176
PERSONAL SEARCH AGENT OPERATION
178
JOB SEARCH OPERATION
170
JOB EXPORT OPERATION
174
REMOTE SITE COMPUTER OPERATIONS
UPLOADING OPERATION
MAGAZINE DISTRIBUTING OPERATION
180
172

FIG. 20

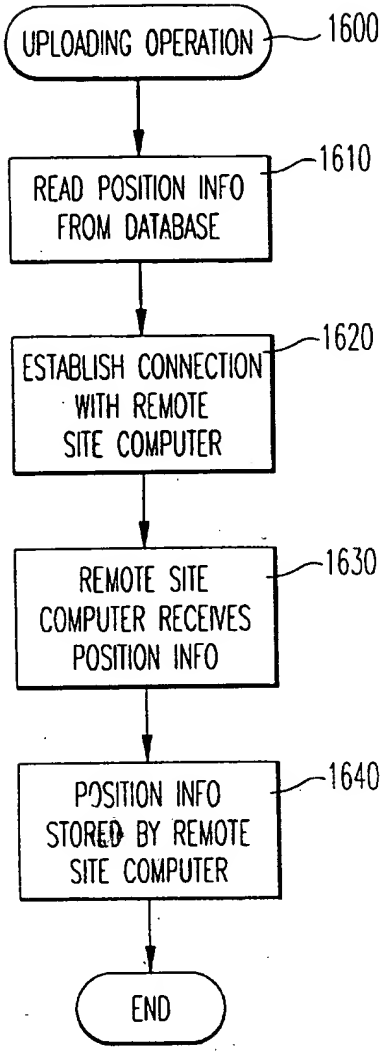

UPLOADING OPERATION
1600
READ POSITION INFO FROM DATABASE
1610
ESTABLISH CONNECTION WITH REMOTE SITE COMPUTER
1620
REMOTE SITE COMPUTER RECEIVES POSITION INFO
1630
POSITION INFO STORED BY REMOTE SITE COMPUTER
1640
END

FIG. 21

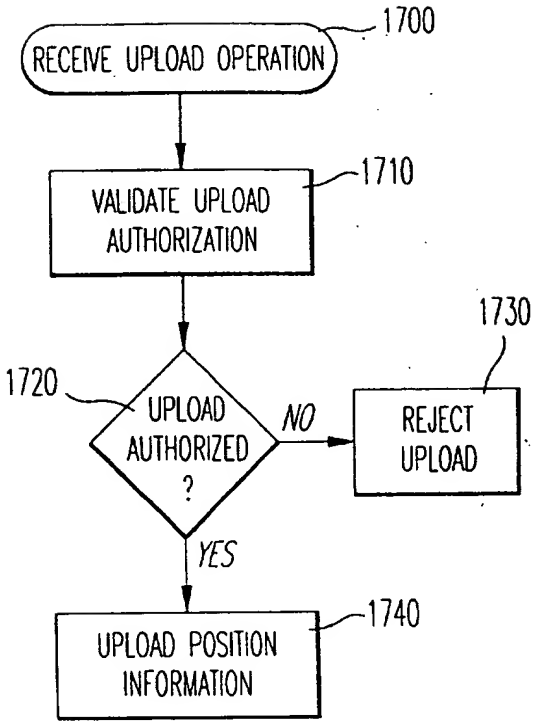

RECEIVE UPLOAD OPERATION
1700
VALIDATE UPLOAD AUTHORIZATION
1710
1720
UPLOAD AUTHORIZED ?
NO
1730
REJECT UPLOAD
YES
UPLOAD POSITION INFORMATION
1740

FIG. 22

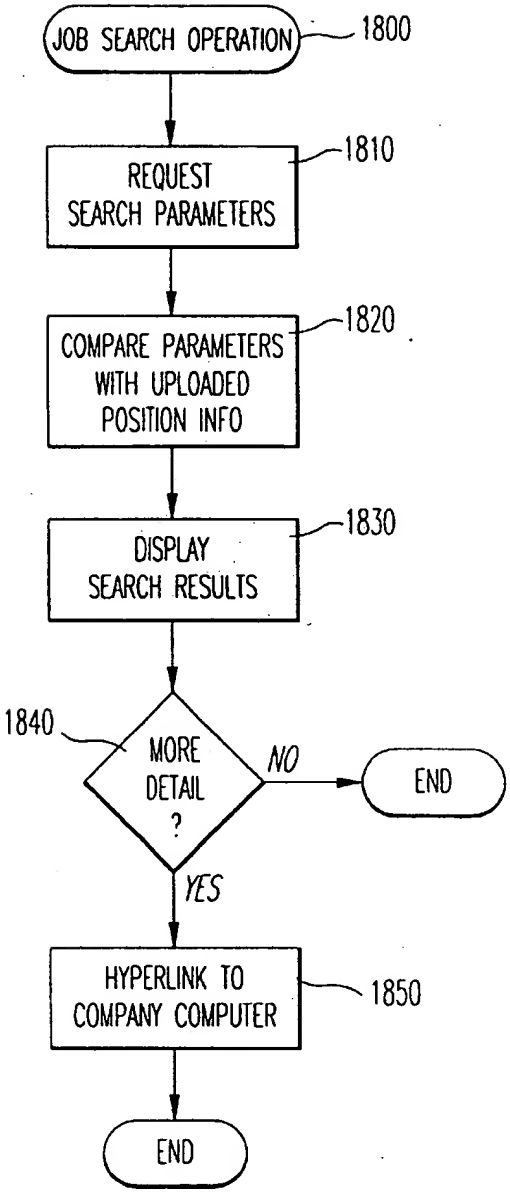

JOB SEARCH OPERATION
1800
REQUEST SEARCH PARAMETERS
1810
COMPARE PARAMETERS WITH UPLOADED POSITION INFO
1820
DISPLAY SEARCH RESULTS
1830
1840
MORE DETAIL ?
NO
END
YES
HYPERLINK TO COMPANY COMPUTER
1850
END

FIG. 23

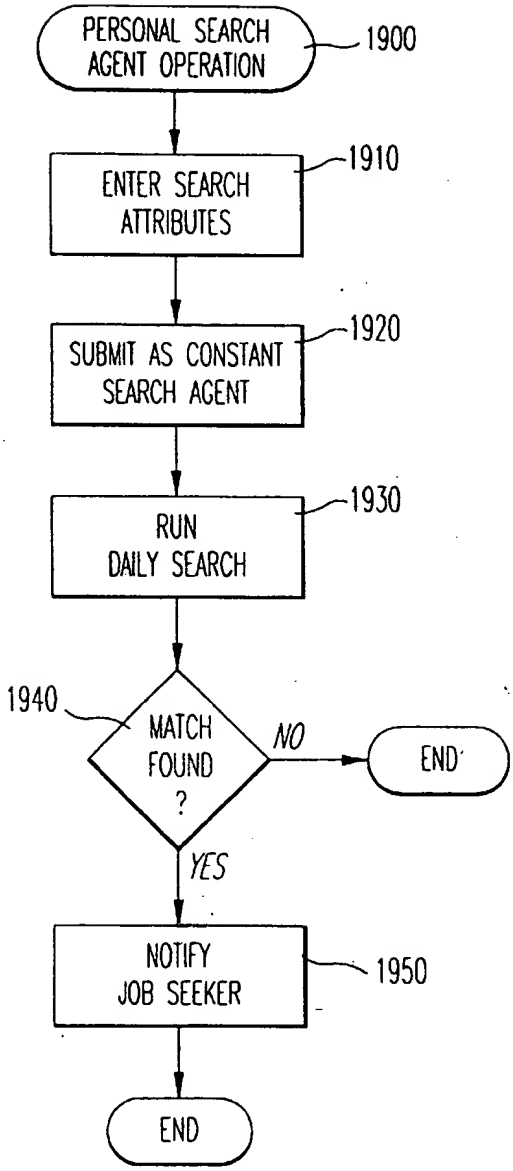

PERSONAL SEARCH AGENT OPERATION
1900
ENTER SEARCH ATTRIBUTES
1910
SUBMIT AS CONSTANT SEARCH AGENT
1920
RUN DAILY SEARCH
1930
1940
MATCH FOUND ?
NO
END
YES
NOTIFY JOB SEEKER
1950
END

FIG. 25

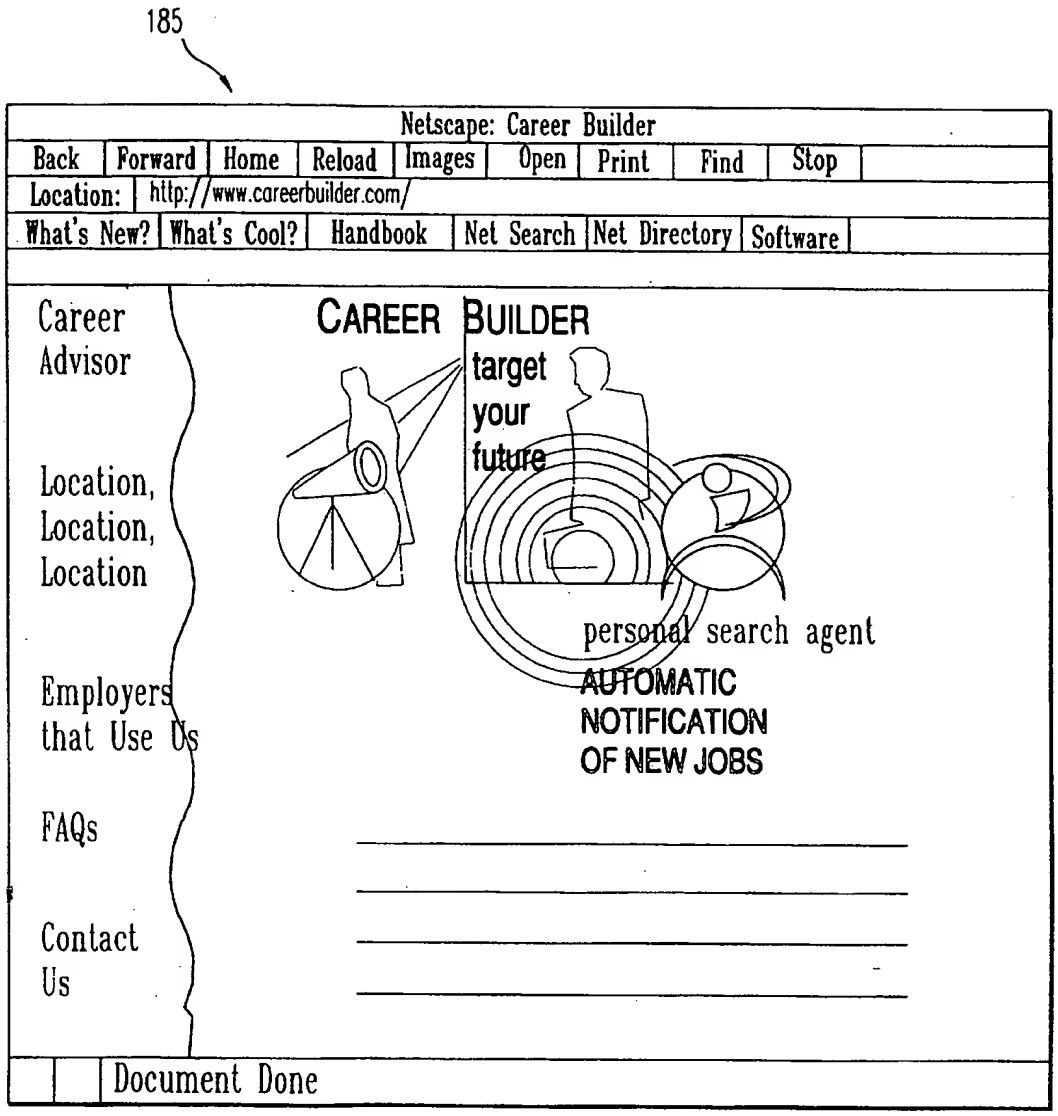

185
Netscape: Career Builder
Back
Forward
Home
Reload
Images
Open
Print
Find
Stop
Location:
http://www.careerbuilder.com/
What's New?
What's Cool?
Handbook
Net Search
Net Directory
Software
Career Advisor
Location, Location, Location
Employers that Use Us
FAQs
Contact Us
CAREER BUILDER
target your future
personal search agent
AUTOMATIC NOTIFICATION OF NEW JOBS
Document Done

FIG. 24

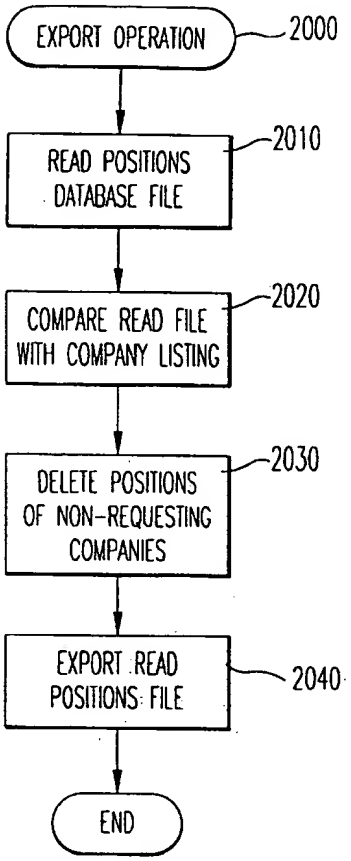

EXPORT OPERATION
2000
READ POSITIONS DATABASE FILE
2010
COMPARE READ FILE WITH COMPANY LISTING
2020
DELETE POSITIONS OF NON-REQUESTING COMPANIES
2030
EXPORT READ POSITIONS FILE
2040
END

FIG. 26

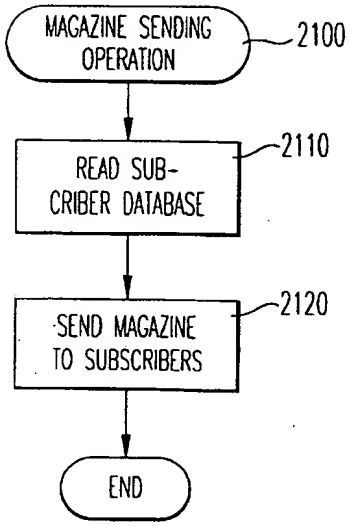

MAGAZINE SENDING OPERATION
2100
READ SUB-CRIBER DATABASE
2110
SEND MAGAZINE TO SUBSCRIBERS
2120
END

FIG. 27

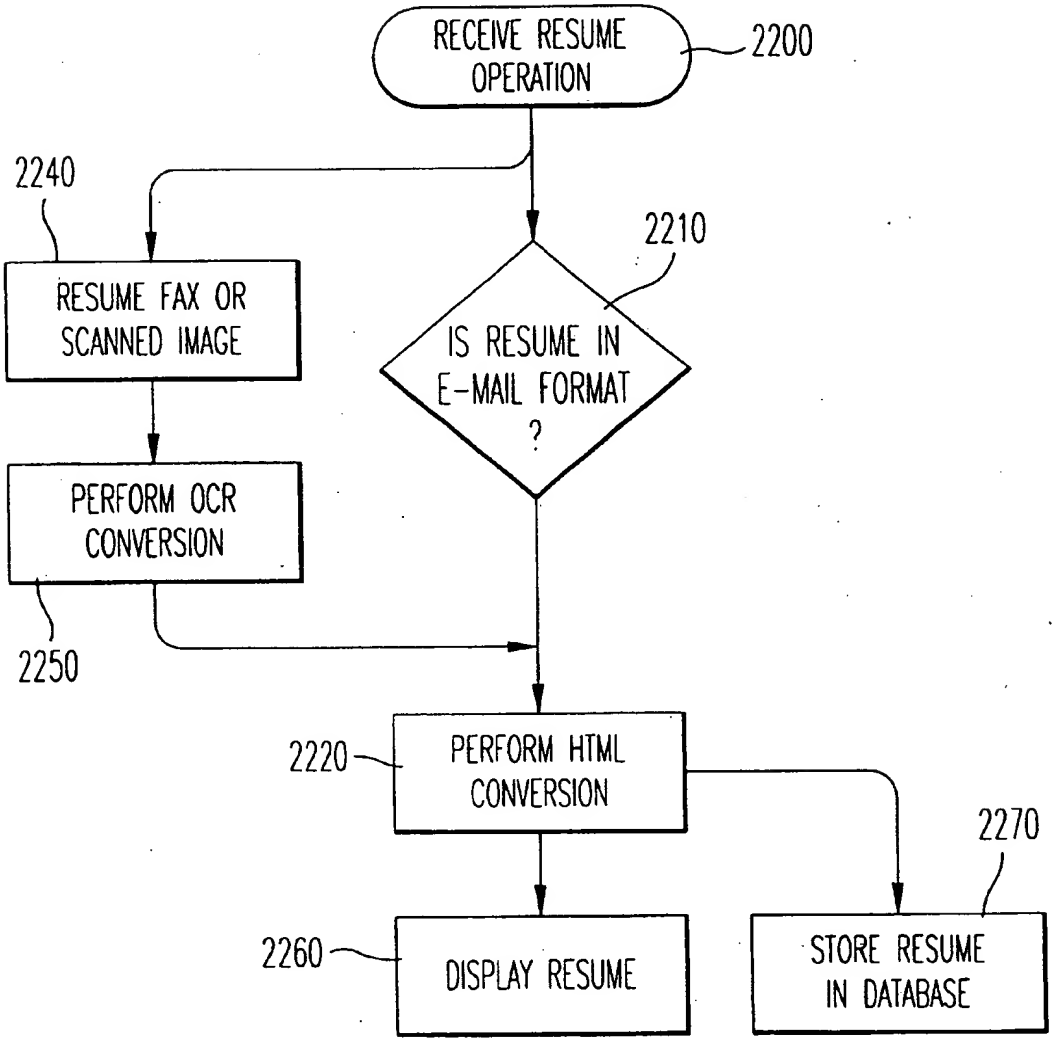

RECEIVE RESUME OPERATION
2200
2240
2210
RESUME FAX OR SCANNED IMAGE
IS RESUME IN E-MAIL FORMAT ?
PERFORM OCR CONVERSION
2250
2220
PERFORM HTML CONVERSION
2270
2260
DISPLAY RESUME
STORE RESUME IN DATABASE

FIG. 28

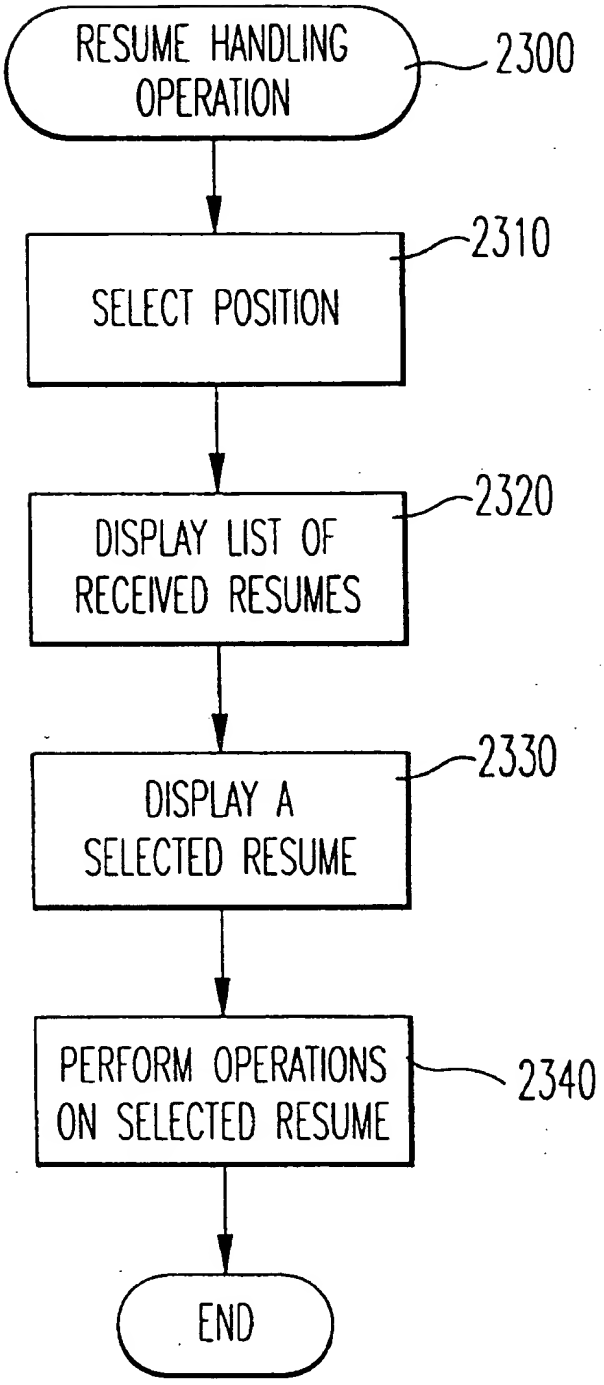

RESUME HANDLING OPERATION
2300
SELECT POSITION
2310
DISPLAY LIST OF RECEIVED RESUMES
2320
DISPLAY A SELECTED RESUME
2330
PERFORM OPERATIONS ON SELECTED RESUME
2340
END

FIG. 29

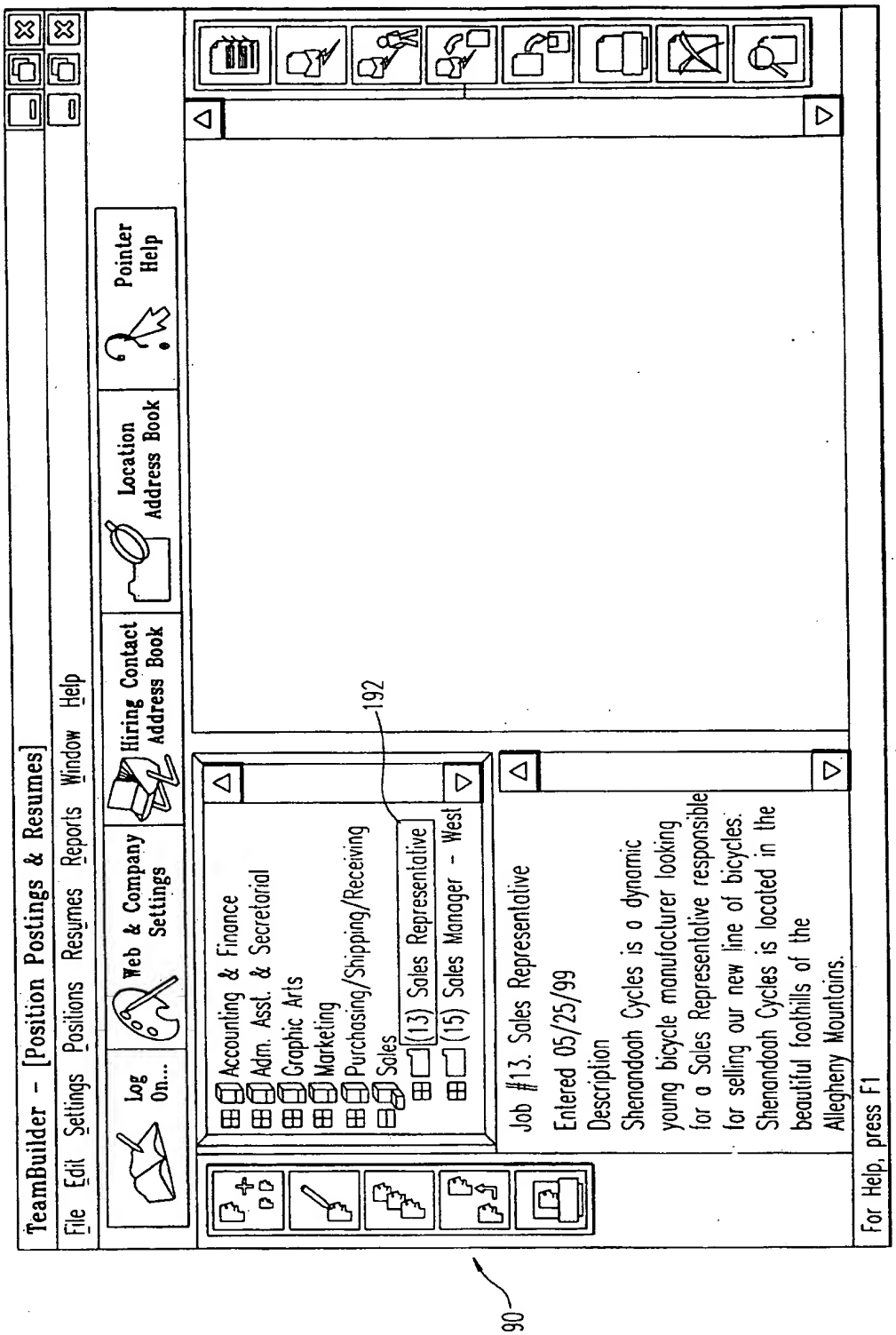

TeamBuilder - [Position Postings & Resumes]
File Edit Settings Positions Resumes Reports Window Help
Log On...
Web & Company Settings
Hiring Contact Address Book
Location Address Book
Pointer Help
Accounting & Finance
Adm. Asst. & Secretarial
Graphic Arts
Marketing
Purchasing/Shipping/Receiving
Sales
(13) Sales Representative
(15) Sales Manager - West
192
Job #13. Sales Representative
Entered 05/25/99
Description
Shenandoah Cycles is a dynamic young bicycle manufacturer looking for a Sales Representative responsible for selling our new line of bicycles. Shenandoah Cycles is located in the beautiful foothills of the Allegheny Mountains.
For Help, press F1
190

FIG. 30

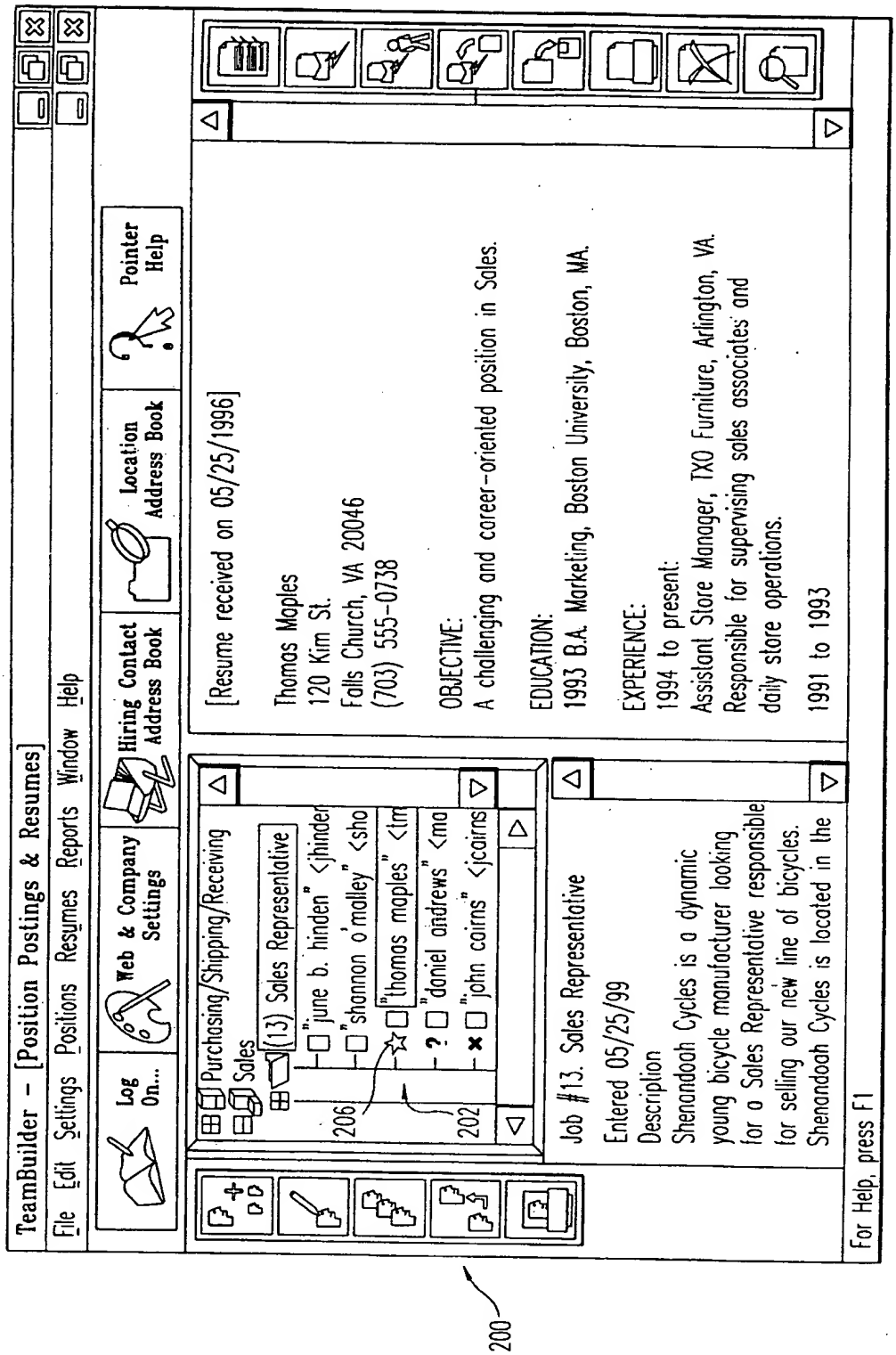

TeamBuilder - [Position Postings & Resumes]
File Edit Settings Positions Resumes Reports Window Help
Log On...
Web & Company Settings
Hiring Contact Address Book
Location Address Book
Pointer Help
Purchasing/Shipping/Receiving
Sales
(13) Sales Representative
"june b. hinden" <jhinder
"shannon o'malley" <sho
"thomas maples" <tm
"daniel andrews" <ma
"john cairns" <jcairns
206
202
Job #13. Sales Representative
Entered 05/25/99
Description
Shenandoah Cycles is a dynamic young bicycle manufacturer looking for a Sales Representative responsible for selling our new line of bicycles. Shenandoah Cycles is located in the
[Resume received on 05/25/1996]
Thomas Maples
120 Kim St.
Falls Church, VA 20046
(703) 555-0738
OBJECTIVE:
A challenging and career-oriented position in Sales.
EDUCATION:
1993 B.A. Marketing, Boston University, Boston, MA.
EXPERIENCE:
1994 to present:
Assistant Store Manager, TXO Furniture, Arlington, VA.
Responsible for supervising sales associates and daily store operations.
1991 to 1993
For Help, press F1
200

FIG. 31

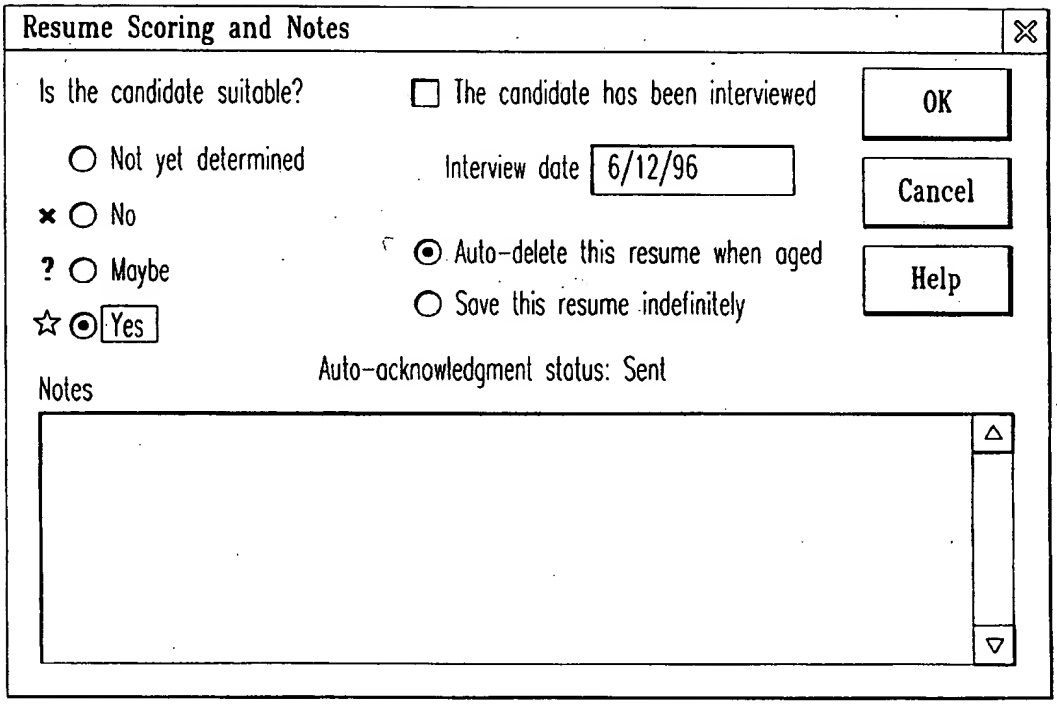

Resume Scoring and Notes
Is the candidate suitable?
Not yet determined
No
Maybe
Yes
The candidate has been interviewed
Interview date 6/12/96
Auto-delete this resume when aged
Save this resume indefinitely
OK
Cancel
Help
Auto-acknowledgment status: Sent
Notes

FIG. 32

210

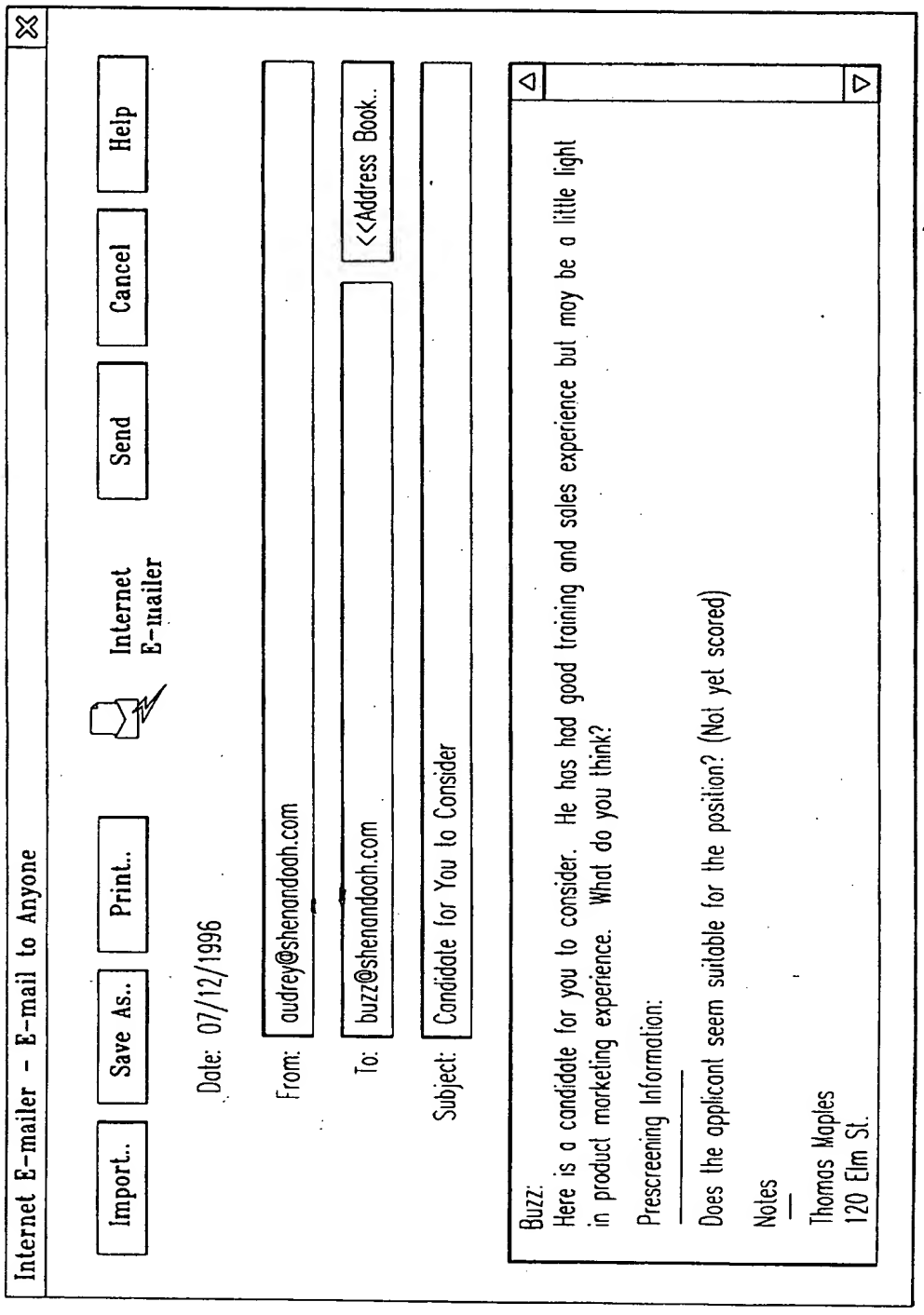

Internet E-mailer - E-mail to Anyone
Import..
Save As..
Print..
Internet E-mailer
Send
Cancel
Help
Date: 07/12/1996
From: audrey@shenandoah.com
To: buzz@shenandoah.com
<<Address Book..
Subject: Candidate for You to Consider
Buzz:
Here is a candidate for you to consider. He has had good training and sales experience but may be a little light in product marketing experience. What do you think?
Prescreening Information:
Does the applicant seem suitable for the position? (Not yet scored)
Notes
Thomas Maples
120 Elm St.
220

FIG. 33

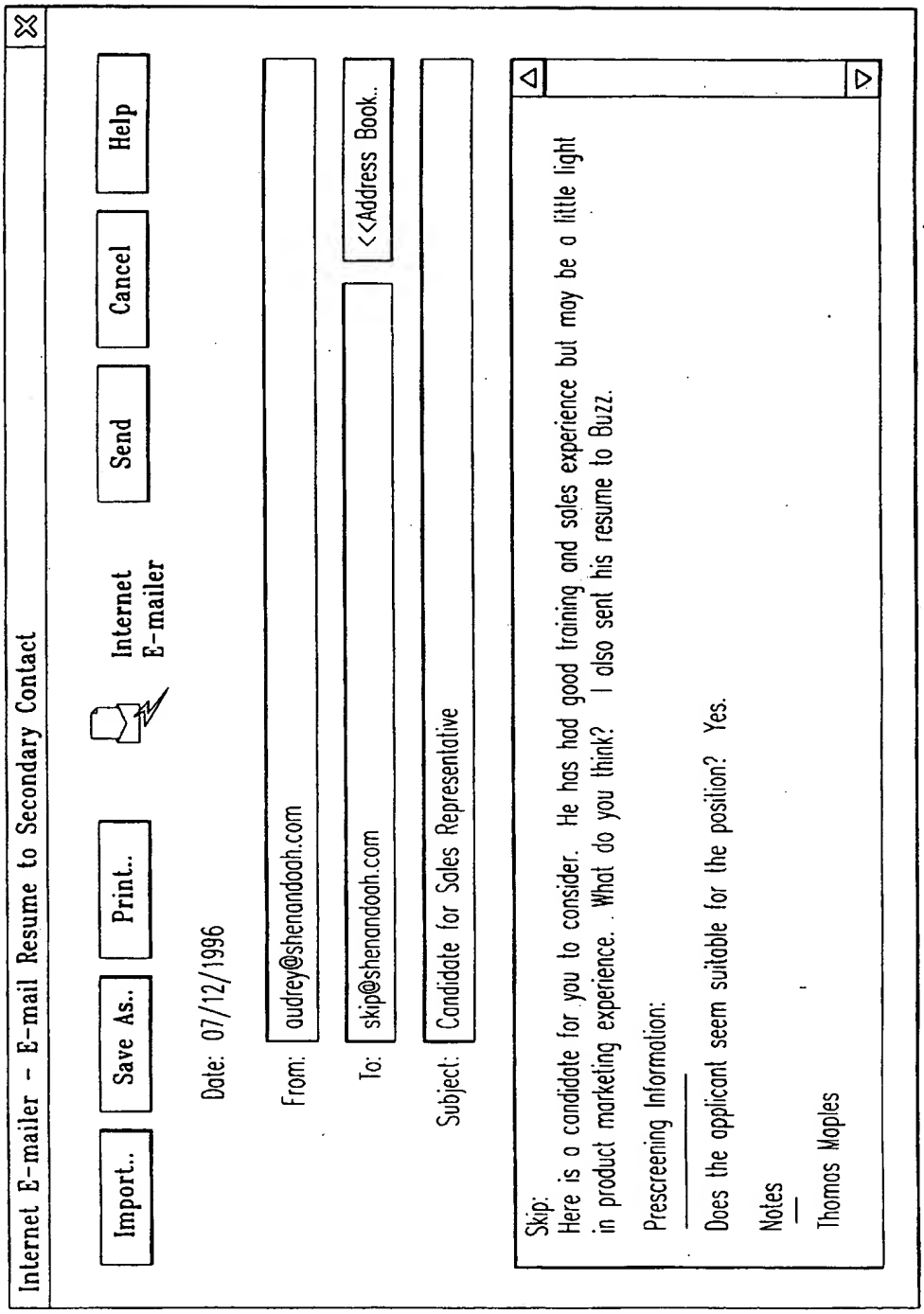

Internet E-mailer - E-mail Resume to Secondary Contact
Import..
Save As..
Print..
Internet E-mailer
Send
Cancel
Help
Date: 07/12/1996
From: audrey@shenandoah.com
To: skip@shenandoah.com
<<Address Book..
Subject: Candidate for Sales Representative
Skip:
Here is a candidate for you to consider. He has had good training and sales experience but may be a little light in product marketing experience. What do you think? I also sent his resume to Buzz.
Prescreening Information:
Does the applicant seem suitable for the position? Yes.
Notes
Thomas Maples
230

FIG. 34

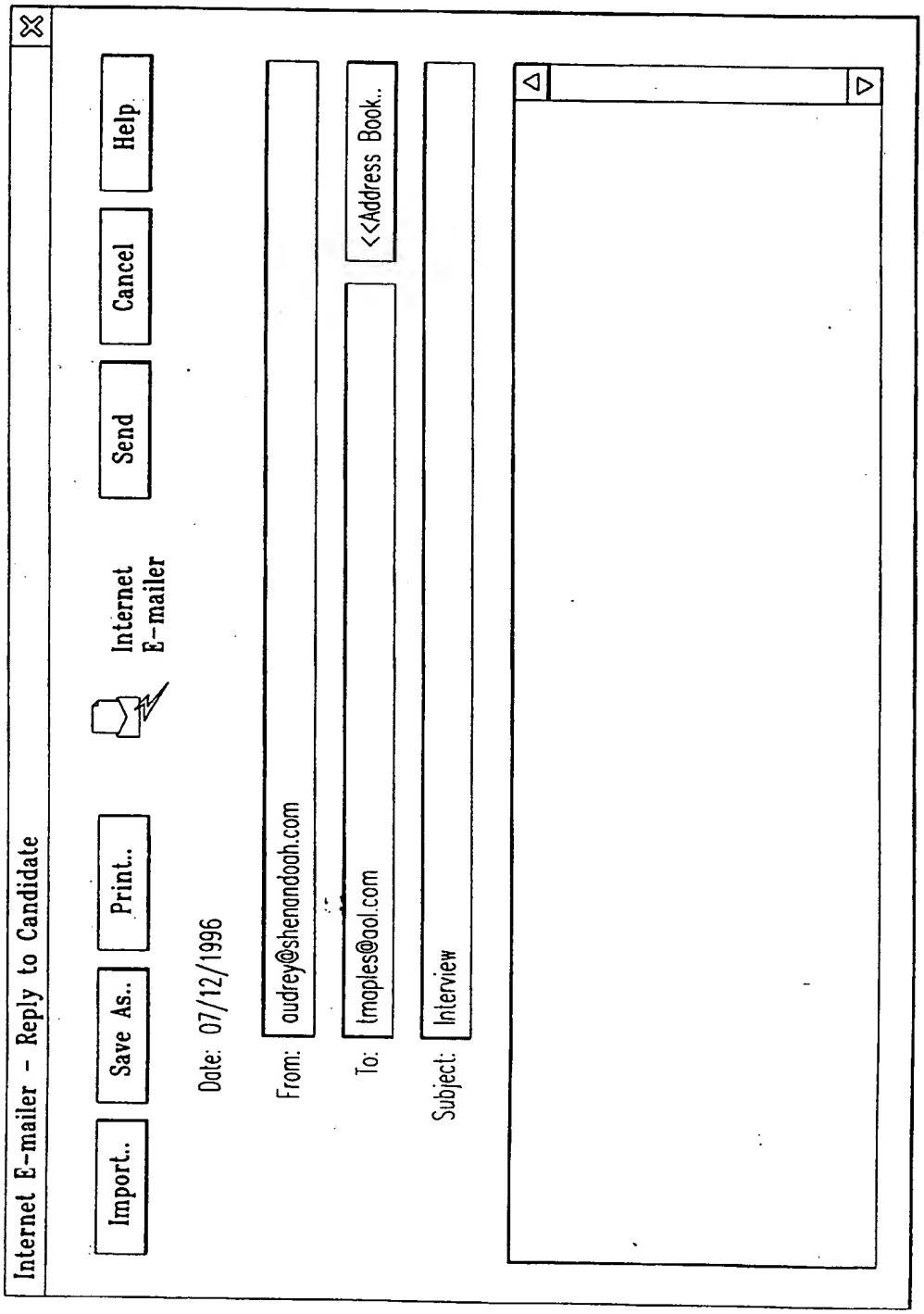

Internet E-mailer - Reply to Candidate
Import..
Save As..
Print..
Internet E-mailer
Send
Cancel
Help
Date: 07/12/1996
From: audrey@shenandoah.com
To: tmaples@aol.com
<<Address Book..
Subject: Interview
240

FIG. 35

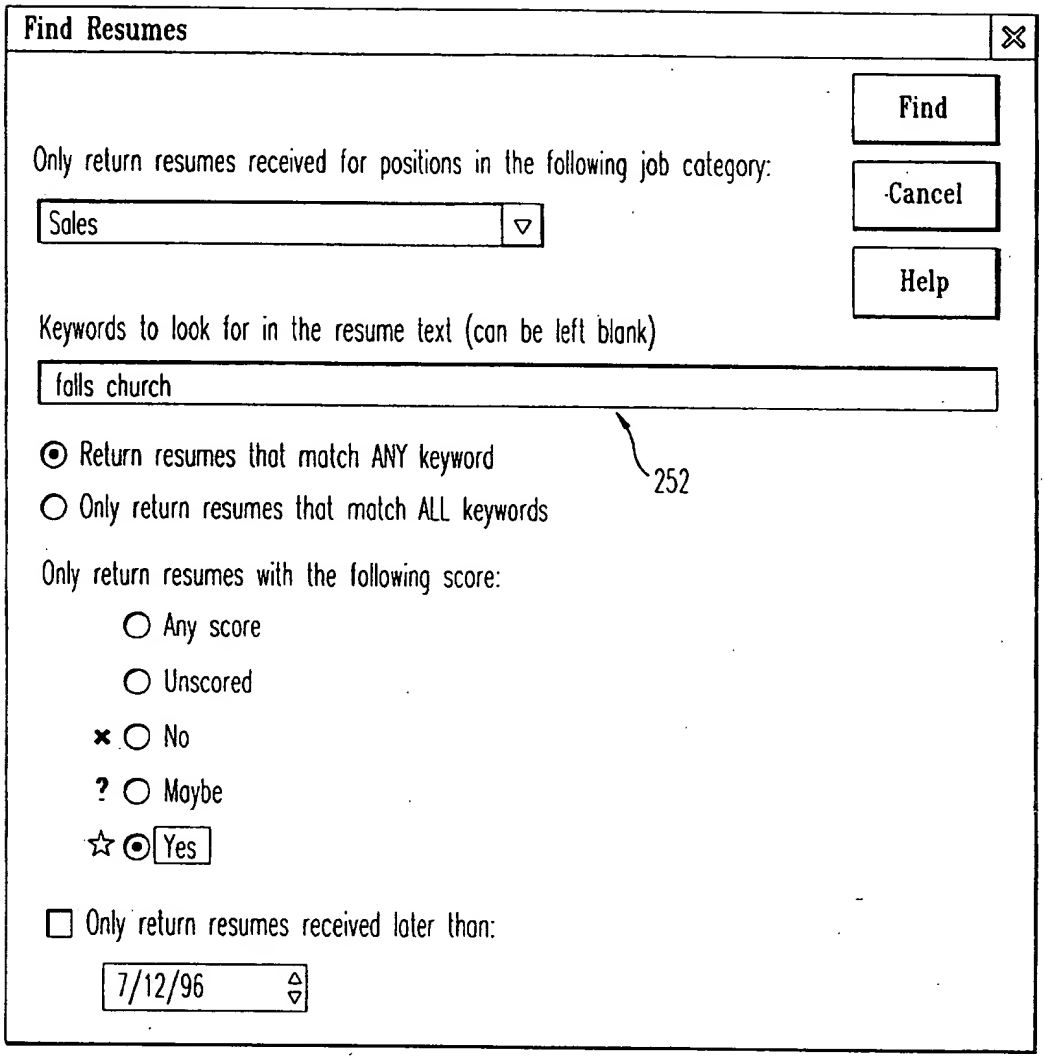

Find Resumes
Find
Only return resumes received for positions in the following job category:
Cancel
Sales
Help
Keywords to look for in the resume text (can be left blank)
falls church
252
Return resumes that match ANY keyword
Only return resumes that match ALL keywords
Only return resumes with the following score:
Any score
Unscored
No
Maybe
Yes
Only return resumes received later than:
7/12/96
250

FIG. 36

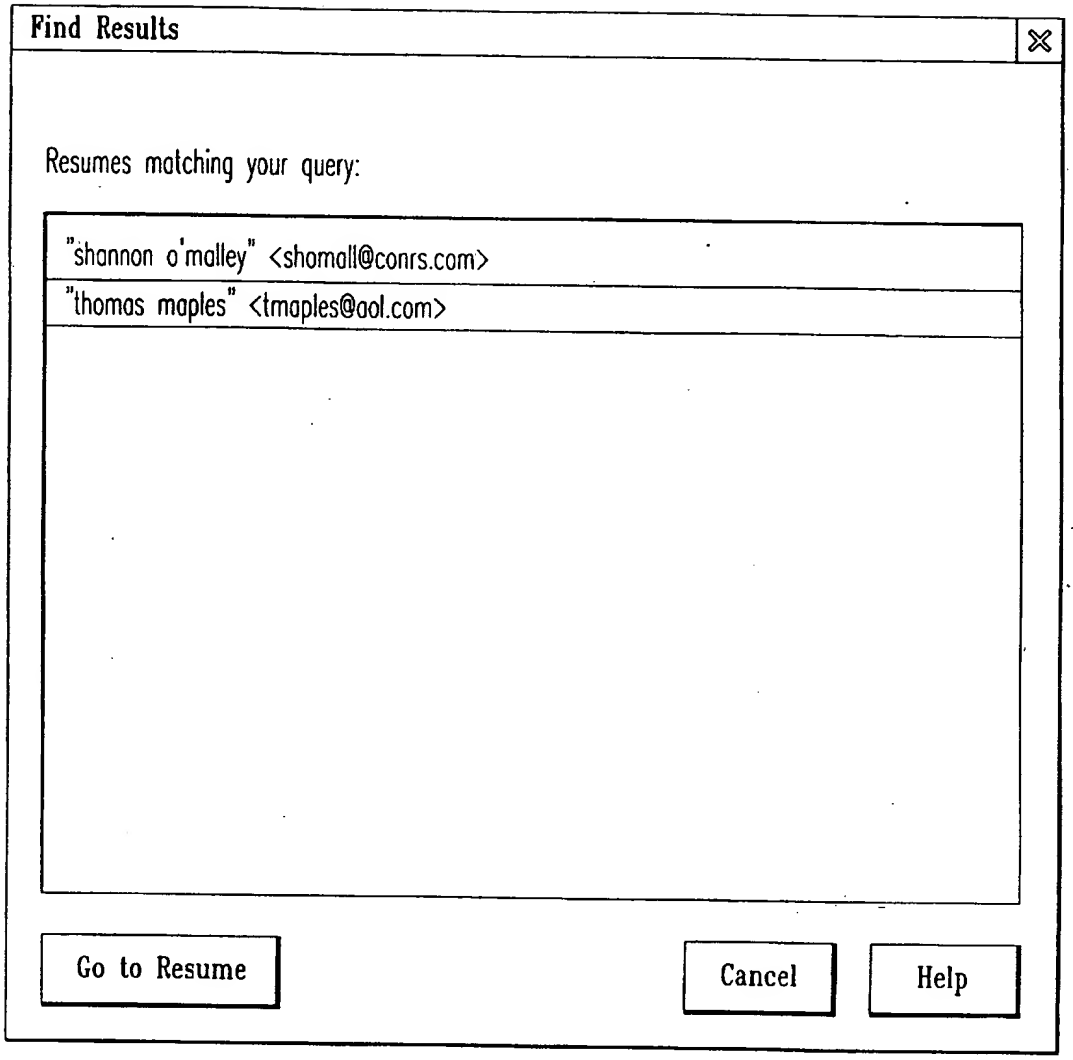

Find Results
Resumes matching your query:
"shannon o'malley" <shomall@conrs.com>
"thomas maples" <tmaples@aol.com>
Go to Resume
Cancel
Help
260

FIG. 37

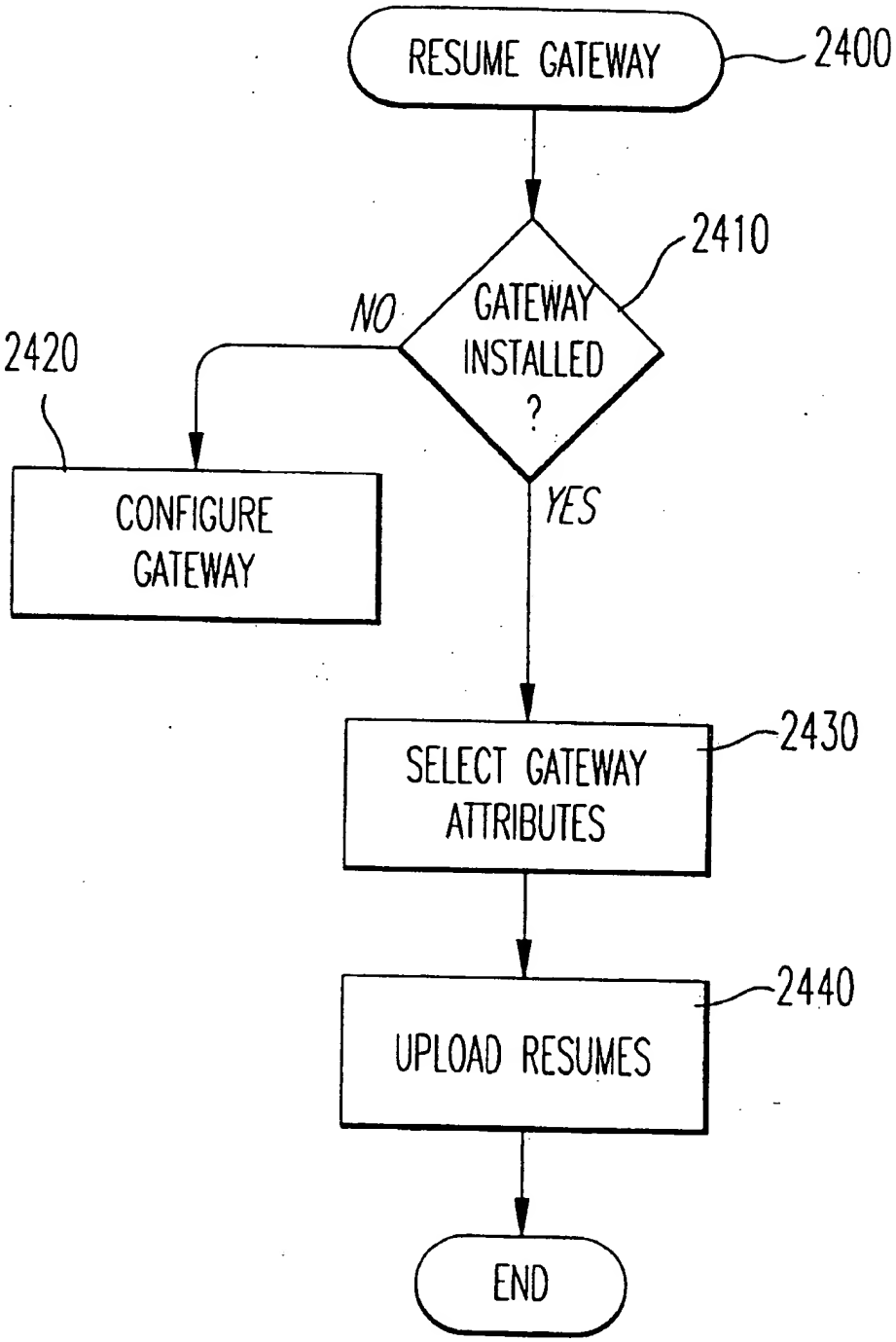

RESUME GATEWAY
2400
2410
GATEWAY INSTALLED ?
NO
YES
2420
CONFIGURE GATEWAY
SELECT GATEWAY ATTRIBUTES
2430
UPLOAD RESUMES
2440
END

FIG. 38

EMPLOYMENT RECRUITING SYSTEM AND METHOD USING A COMPUTER NETWORK FOR POSTING JOB OPENINGS AND WHICH PROVIDES FOR AUTOMATIC PERIODIC SEARCHING OF THE POSTED JOB OPENINGS

This is a continuation of U.S. patent application Ser. No. 08/853,376 filed on May 8, 1997, now U.S. Pat. No. 5,978,768 the entire contents of which is incorporated herein by reference.

FIELD OF THE INVENTION

The present invention relates to a method and apparatus for providing an interactive computer-driven employment recruiting service. More specifically, the present invention relates to a method and apparatus which enables an employer to use a computer network, such as the Internet, to advertise available positions and receive resumes electronically from prospective applicants, and enables prospective applicants to use the Internet to find those available positions.

BACKGROUND OF THE INVENTION

Many resources are presently available to assist businesses in finding suitable candidates to fill available positions. Perhaps the most common recruiting method is direct advertising by employers in the employment section of a newspaper, or in a magazine that is targeted to people having specific skills (e.g., engineers, attorneys, computer programmers, and so on). A typical employment advertisement will generally include a brief description of the available position, along with the address, telephone number, facsimile number and/or e-mail address of the employer. Applicants can apply for the advertised position by sending their resumes directly to the employer by facsimile, regular mail or e-mail. An employer will usually have a person in its employment or human resources department screen the resumes to identify the applicants best suited for the position.

Many disadvantages are inherent in this conventional recruiting method. For instance, a magazine and especially, a newspaper, has a limited amount of subscribers and generally services only a limited region. Therefore, the company's advertisement may never be seen by many qualified people outside of that region. In order to distribute the advertisement more universally, it may be necessary for the employer to run the advertisement in several newspapers or magazines, thus substantially increasing the advertising expense incurred by the company.

Furthermore, this conventional method is also very inefficient even after the resumes are received by the company. For example, because the resumes must be manually organized and screened, a person in the company's recruitment or human resources department may need to spend a significant amount of time every day performing this task. In a large corporation having many positions becoming available on a daily basis, it may be necessary for several people to devote most of their time to organizing and screening applicants' resumes. Furthermore, because a large amount of resumes may be received, the task of organizing and screening those resumes may be particularly onerous and thus, a certain resume may be overlooked or mishandled. As a result, a candidate who is well suited for a position may never be considered.

In an attempt to increase the scope of their advertising, some companies have begun using computer networks, such as the Internet, to post employment opportunities. For instance, a company may set up its own "home page" on the World Wide Web (the "Web") on which various job openings can be posted. Anyone who subscribes to the internet can thus access or "log on" to that company's home page, determine which positions at that company are available, and send a resume to the company via regular mail, facsimile or e-mail.

Although a home page can be a useful tool in enabling a company to expand its advertising capabilities, a home page provides no mechanism for organizing or screening resumes that are received. The received resumes still must be organized and screened by a person in the company's human resources department in the traditional manner. Hence, the possibility still exists that a resume will be overlooked or mishandled.

Furthermore, in order for an applicant to see the company's advertisement, the applicant must be aware that the company exists and has a home page on the Web. Hence, if the applicant has never heard of the company, the applicant would not be aware that that company has a home page. Many highly qualified candidates therefore may overlook a company's advertisement because they simply are not aware that the company exists.

Several advertisement agencies have recognized these potential shortcomings and have developed "career bulletin boards" on the Web. A career bulletin board, such as CareerMosaic, MonsterBoard, and the like, is an electronic bulletin board on which messages can be "posted" as on a conventional bulletin board. A career bulletin board is advantageous because it provides a single location at which many companies can post employment opportunities. A job seeker can log onto the bulletin board to peruse the posted available positions. However, several problems are inherent with career bulletin boards.

For example, if a company wants a job seeker to see complete descriptions of their job openings, the company must send those complete descriptions directly to the bulletin board provider. The computer at the site of the bulletin board provider must store all of the company's information and thus, must have access to a large amount of memory.

Furthermore, the computer must be capable of continuously accessing that information to display it on the bulletin board. These accessing and displaying operations, which involve the handling of large amounts of data, may slow the computer's operation significantly. As a consequence, if many job seekers are accessing the bulletin board at the same time, the computer may be incapable of handling this high level of activity. Hence, additional job seekers may be unable to access the bulletin board at that time, or job seekers who are already logged onto the bulletin board may experience very slow service. Also, if a failure occurs with the computer, the entire bulletin board will become unavailable and thus, every job posting will become unavailable.

Additionally, bulletin boards are typically set up so that a job seeker submits a resume directly to the bulletin board provider. The resume is stored in a central repository along with all of the other resumes, and must be forwarded to the company to which the job seeker is applying for employment. This type of arrangement decreases the confidentiality of the resumes, because they are handled by the bulletin board provider instead of only by personnel at the company. Also, this type of arrangement decreases the company's confidentiality, since a complete job description is sent to the bulletin board provider. Furthermore, once the resumes are received by the company, they still must be manually

organized and screened. In addition, if a company updates its listing of job descriptions, the updated list must be sent to every bulletin board to which the company subscribes.

It is further noted that the direct advertising methods discussed above require that a job seeker monitor the advertisements on a regular basis in order to ascertain whether a specific position is available. Hence, instead of relying on advertisements, an employer or job seeker may use a professional recruiter to find suitable candidates for available positions and vice-versa. However, the efforts of professional recruiters are limited by the resources available to them.

For example, if a recruiter has been hired by an employer to find suitable candidates for an available position, the recruiter must undertake efforts such as "cold calling" suitable candidates employed by other companies, networking with other recruiters to obtain names of potential candidates, and the like. Conversely, if a recruiter has been hired by a job seeker to find a suitable position, the recruiter may need to undertake similar efforts to locate such a position. Hence, it is likely that a recruiter will overlook available positions and suitable candidates. Furthermore, since recruiters charge a substantial fee for their services, many companies and job seekers are reluctant to use a recruiter and incur such expense.

In order to assist companies in facilitating their recruiting efforts, several software companies have developed resume screening programs which can be configured to screen a collection of resumes for the most qualified candidates. Resumes that are received by an employer who uses this software are first scanned into a computer and stored. The computer running the resume screening software can then be controlled to search those resumes for various attributes, such as college degrees, prior experience, special qualifications, and the like. The computer will then provide a list of the most qualified candidates out of the entire collection of resumes. This computerized screening and sorting method allows human resource personnel to devote more time to other tasks.

However, known resume screening software does not assist employers in advertising available positions. Although the resume screening software is useful once a resume has been received by the company, it provides no advantage in enabling the company to seek out the most qualified candidates. A company must still use either the conventional methods of advertising (e.g., newspaper, magazines, professional recruiter, etc.) or a career bulletin board in order to solicit resumes. Hence, the drawbacks associated with those types of advertising methods have not been resolved.

Therefore, a continuing need exists for a system which will maximize the scope of a company's advertising efforts while also providing a reasonably secure and efficient manner of forwarding resumes to the company and enabling the company to efficiently screen and categorize the resumes received. Additionally, a continuing need exists to assist a job seeker in locating available positions quickly and effectively.

SUMMARY OF THE INVENTION

An object of the present invention is to provide a method and apparatus which enables an employer to advertise available positions on a computer network, such as the Internet, to directly receive resumes from prospective candidates, and to efficiently organize and to screen the received resumes.

A further object of the present invention is to provide a method and apparatus which monitors employment advertisements for a job seeker and automatically notifies the job seeker when a position for which the job seeker is suitable becomes available.

A further object of the present invention is to provide a method and apparatus which enables a plurality of companies to advertise job positions at a single location accessible via a computer network, such as the Internet, enables a job seeker to access those positions via the computer network, and then disconnects a job seeker from the single location while enabling the job seeker to communicate directly with a company via the computer network when the job seeker selects an available position at that company.

The above objects are substantially achieved by providing a software program, recorded on a computer readable medium, for controlling a computer of a potential employer to generate a listing of available employment positions that can be accessed via the Internet. Specifically, the software program is adaptable to be run by an employer's computer to control the computer to generate a computer readable file (position file) that includes information pertaining to available employment positions and which can be accessed from a remote site via the Internet. For example, the position file can be posted as a Web site on the World Wide Web. A job seeker can access the Web site and search the information in the position file for a desired position.

Also, a portion of the position file can be uploaded to a remote site computer to link the position file to a computer readable file, such as a remote Web site, that is hosted by the remote computer. Job seekers can access the remote Web site and search the uploaded portion of the position file for a desired position. The remote computer also is capable of automatically searching the uploaded portion of the position file for data that matches data provided by the job seeker, and is capable of informing the job seeker's computer by an electronic message sent via the Internet when a match is found.

Furthermore, the portion of the position file which includes more detailed information about the available positions is maintained by the employer's computer instead of by the remote site. Hence, when a job seeker chooses to explore this additional information, the job seeker's computer is disconnected from the remote site, and reconnected to a new site which possesses this additional information that has been provided to that site by the computer of the employer offering the position. The position file further includes linking data which enables the job seeker's computer to send an electronic message, such as an e-mail or the like, to the employer's computer and vice-versa via a computer network such as the Internet.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a diagrammatic illustration of a computerized job search system according to an embodiment of the present invention;

FIG. 2 is a state diagram illustrating an example of operations performed by a computer running a software program according to an embodiment of the invention;

FIG. 3 is a flowchart illustrating an example of a sequence of steps performed by a computer performing the create positions operation shown in FIG. 2;

FIG. 4 is an example of a display screen generated by the computer performing the sequence of steps set forth in FIG. 3;

FIG. 5 is a detailed view of a portion of the display screen shown in FIG. 4;

FIG. 6 is a detailed view of another portion of the display screen shown in FIG. 4;

FIG. 7 is a detailed view of a further portion of the display screen shown in FIG. 4;

FIG. 8 is an example of a display screen generated by the computer performing the position creating or position editing steps of the sequence of steps set forth in FIG. 3;

FIG. 9 is an example of a display screen generated by a computer performing the position editing, duplicating, deactivating or printing steps set forth in Fig.3;

FIG. 10 is an example of a screen display generated by a computer performing the position duplicating steps set forth in FIG. 3;

FIG. 11 is a flowchart illustrating an example of a sequence of steps performed by a computer running the program according to the embodiment of the present invention described with regard to FIGS. 1–10 when the computer is being controlled to add user information;

FIG. 12 is an example of a display screen generated by the computer performing the user information entry operations set forth in FIG. 11;

FIG. 13 is an example of a screen display generated by the computer performing the user information entry operations set forth in FIG. 11;

FIG. 14 is a flowchart showing an example of a sequence of steps performed by a computer running the program according to the embodiment of the present invention described with regard to FIGS. 1–13 when the computer is being controlled to enter information pertaining to geographic locations;

FIG. 15 is an example of a screen display generated by the computer when performing the operations shown in FIG. 14;

FIG. 16 is an example of a screen display generated by the computer when performing the operations shown in FIG. 14;

FIG. 17 is a flowchart illustrating an example of a sequence of steps performed by a computer when performing the create web site operation shown in FIG. 2;

FIG. 18 is an example of a display screen generated by the computer when performing the sequence of steps shown in FIG. 17;

FIG. 19 is a flowchart illustrating an example of a sequence of steps performed by a computer when performing the upload to remote site operation shown in FIG. 2;

FIG. 20 is a state diagram showing an example of operations performed by a computer running another software program according to the embodiment of the present invention;

FIG. 21 is a flowchart illustrating an example of a sequence of steps performed by the computer when performing the upload to a specific remote site operation shown in FIG. 2;

FIG. 22 is a flowchart showing an example of a sequence of steps performed by a computer when performing the uploading operation shown in FIG. 20;

FIG. 23 is a flowchart showing an example of a sequence of steps performed by the computer when performing the job search operation shown in FIG. 20;

FIG. 24 is an example of a page of a Web site created by the computer performing the operations shown in FIG. 20;

FIG. 25 is a flowchart illustrating an example of a sequence of steps performed by a computer when performing the personal search agent operation shown in FIG. 20;

FIG. 26 is a flowchart illustrating an example of a sequence of steps performed by a computer when performing a job export operation shown in FIG. 20;

FIG. 27 is a flowchart showing an example of a sequence of steps performed by a computer when performing the magazine distributing operation shown in FIG. 20;

FIG. 28 is a flowchart showing an example of a sequence of steps performed by a computer when performing the receive resume operation shown in FIG. 2;

FIG. 29 is a flow chart showing an example of a sequence of steps performed by a computer when performing the manage resumes operation shown in FIG. 2;

FIG. 30 is an example of a display screen generated by a computer performing an operation of selecting a resume for display according to the steps of the flowchart shown in FIG. 29;

FIG. 31 is an example of a display screen generated by a computer performing the operation of displaying a resume according to the steps of the flowchart shown in FIG. 29;

FIG. 32 is an example of a display screen generated by a computer performing a resume scoring operation according to a step in the flowchart shown in FIG. 29;

FIG. 33 is an example of a display screen generated by a computer performing an operation for e-mailing a resume as discussed with regard to the flowchart set forth in FIG. 29;

FIG. 34 is an example of a display screen generated by a computer performing an operation for e-mailing a resume to another user as discussed with regard to the flowchart set forth in FIG. 29;

FIG. 35 is an example of a display screen generated by a computer performing an operation for responding to an applicant's resume as discussed with regard to the flowchart set forth in FIG. 29;

FIG. 36 is an example of a display screen generated by a computer performing an operation for finding a resume as discussed with regard to the flowchart set forth in FIG. 29;

FIG. 37 is an example of another display screen generated by a computer performing an operation for finding a resume as discussed with regard to the flowchart set forth in FIG. 29; and

FIG. 38 is a flow chart illustrating a sequence of steps performed by a computer when performing the create resume gateway operation shown in FIG. 2.

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

An overview of an embodiment of the present invention is illustrated in FIG. 1. Specifically, this figure illustrates a relationship between a computer 40 used by a person searching for a position (job seeker computer 40), a plurality of employers or companies 41 each having a computer 42 (company computer 42) which runs computer readable software according to an embodiment of the present invention, and a remote location 43 having a computer 44 (remote site computer 44) which runs additional computer readable software according to the present invention. The remote location computer 44 is maintained by a service provider which typically has contractual relationships with the employers or companies 41. The job seeker computer 40, company computers 42, and remote site computer 44 are provided with suitable modems and communications software so that they can communicate with each other via the Internet 46.

The operations performed by a company computer 42 running computer software according to an embodiment of the present invention will now be described. The computer readable software is written in the form of a computer executable program (hereinafter "the company site pro-

gram" or "company site software"), typically in the form of a magnetic diskette, and is written, for example, in scripting languages such as C, Visual C++, HTML, JAVA, SQL, and the like.

Specifically, the company site program that is run by the company computer **42** is compatible for use with Windows NT™ or Windows 95™, but can be written in any language that is executable by any type of computer, and can be configured to be compatible for use with any type of operating system, software or Web browser. The company site program can be stored on any computer readable medium, such as a CD, floppy disk, or the like, and can be transmitted from one computer to another by e-mail or in any other known manner.

FIG. **2** is a state diagram illustrating examples of the tasks that the company site program controls each of the company computers **42** to perform. That is, the overall operation **48** of the company computer **42** as controlled by the company site program includes a position posting operation **50**, a Web site creation operation **51**, uploading operations **52** and **53**, resume handling operations **54** and **55**, and a gateway creation operation **56**, all of which are described in detail below. The position posting operation **50** will now be described with reference to FIGS. **3–10**.

FIG. **3** is a flowchart illustrating an example of the operations performed by a company computer **42** when the computer **42** is controlled by the company site program according to an embodiment of the present invention to create a new job posting for an available position, or to manage an existing position. Specifically, the program controls the company computer **42** to display an interactive screen on its display screen which can be used by a person, such as one of the company's human resource personnel (e.g., a "hiring contact" for a specific position), to control the computer to perform certain operations which are described below.

The company site program can be configured to control the company computer **42** to allow a user (hereinafter "hiring contact") to interact with the program in any suitable manner. For example, if the company site program is being used with Windows 95™, the Windows 95™ display screen that is displayed on screen of the company computer **42** can be configured to display an icon which, when selected by the hiring contact (e.g., via manipulation of a computer mouse or in any known manner), will enable the hiring contact to interact with the program. Alternatively, if the program is being used with Windows NT™, the hiring contact can also select the icon representative of the program.

Once the icon is selected, the company site program will control the company computer **42** to display on its display screen a command requesting that the hiring contact enter his or her name, pseudonym, or the like, which allows the hiring contact to interact with or "log on" to the company site program. After the hiring contact has logged on, the company site program can control the computer **42** to display an interactive screen as illustrated, for example, in FIG. **4**. It is noted that the screen shown in FIG. **4**, as well as all of the exemplary screen configurations illustrated in the attached figures, may be found in the "TeamBuild™ Getting Started Guide" (Netstart™, Inc., 1996), the entire contents of which is incorporated by reference herein.

As stated, the interactive screen allows the hiring contact to instruct the company site program to control the company computer **42** to perform desired tasks. Specifically, as shown in FIG. **4**, the display screen **60** includes an administrative tool bar display **62**, a position tool bar display **64** and a resume tool bar display **66**. The positions at which these tool bar displays appear on the screen can be changed by the hiring contact through the manipulation of a computer mouse, for example, or by any other method similar to that in which icons and display boxes in Windows 95™ or Windows NT™ are manipulated as would be appreciated by one skilled in the art.

As illustrated in FIGS. **4** and **5**, the administrative tool bar **62** has a log-on command key **70**, a web settings command key **72**, a hiring contact address book command key **74**, a location address book key **76**, and a help command key **78**, all of which are described in more detail below. These "keys" are software generated keys which can be selected, for example, by manipulation of a mouse as would be readily appreciated by one skilled in the art. It is noted that the use of the term "selected" or its derivatives in this application refers to selection by manipulation of a mouse, depression of the "enter" key on a computer keyboard, or in any manner as would readily be appreciated by one skilled in the art.

As shown in FIGS. **4** and **6**, the position tool bar **64** has an add position command key **80**, an edit position command key **82**, a duplicate command key **84**, a deactivate position command key **86**, and a print command position command key **88**, all of which are software keys as described in detail below. As shown in FIGS. **4** and **7**, the resume tool bar **66** includes a score resume command key **90**, an e-mail resume command key **92**, an e-mail to secondary contact command key **94**, a reply to candidate command key **96**, an export resume to disk command key **98**, a print resume command key **100**, a delete resume command key **102**, and a find resume command key **104**, all of which are software generated keys and described in detail below.

Turning back to FIG. **3**, an example of the interactive process that occurs between the company site program and a hiring contact will now be discussed. It is noted that the company site program can control the company computer **42** to perform other tasks and operations contemporaneously with the operations discussed with respect to FIG. **3** and, for that matter, any of the operations discussed herein.

It is further noted that before the company site program controls the company computer **42** to permit a user to perform certain tasks, such as adding a job description, faxing a resume, and so on, the company site program will check the status of the license key governing the particular tasks or feature to be performed or used. As would be appreciated by one skilled in the art, the license keys are provided by the organization which provides the company site program to the company, and are set based on the agreement between the provider organization and the company using the company site program. For example, if the company has not licensed the resume faxing feature from the provider, the provider will not have activated the license key governing that feature which would instruct the program to allow a hiring contact at the company to use that feature. Also, if the company has only paid the provider to use the company site program to post a certain number of job openings, the license key governing the amount of job postings will control the program to prevent the hiring contact from posting a number of jobs in excess of that amount.

When the company site program is controlling the company computer **42** to perform the position related operations beginning at step **1000**, the company site program in step **1010** will cause the company computer **42** to monitor the position command keys of the position tool bar **64**. In step

1020, if the company site program determines that the add position command key 80 has not been selected, the company site program will continue to step 1030 where it will monitor whether any of the position categories have been selected. It is noted that in the upper left hand portion of the display screen 60, as shown in FIG. 4, the listing of position categories will be displayed next to a respective "plus" (+) sign. A hiring contact can select any of those position categories by selecting the "plus" sign next to that category by manipulation of a mouse, for example, or in any manner that would be readily appreciated by one skilled in the art. It is further noted that the position categories can be displayed at any suitable location on the display screen of the company computer 42, and can be displayed in any suitable fashion.

If the company site program determines in step 1030 that none of the position categories have been selected, then the company site program will return to step 1010 where it will monitor the position tool bar 64 and categories. However, if the company site program determines in step 1030 that a position category has been selected, the company site program will proceed to step 1070 as will be described below. Of course, steps 1020 and 1030, and any of the steps discussed herein, can be performed in any suitable order as would be appreciated by one skilled in the art.

If the company site program has determined in step 1020 that the add position command key 80 has been selected, the company site program will proceed to step 1040 where it will control the computer 42 to display on its display screen a screen 110 as shown in FIG. 8. Specifically, the company site program will control the computer 42 to display on its display screen a plurality of commands instructing the hiring contact to enter information pertaining to the position for which an applicant is being sought.

For example, as illustrated, the screen display 110 may include a position entry location 112 in which the hiring contact can enter the title of the position, a category location 114 in which the hiring contact can enter the category of the position, a brief description location 116 in which the hiring contact can enter a brief description of the position, and a detailed description location 118 in which the hiring contact can enter a detailed description of the position.

As the hiring contact enters the information in step 1050, the computer 42 will store that information at a location in memory pertaining to that position which can be accessed with reference to that position. That information can also be stored with respect to the particular hiring contact.

When the hiring contact enters all of the information on screen 110, the hiring contact can select the next screen command 120 to cause the company site program to control the computer to display another screen having commands and locations in which the hiring contact can enter further information and criteria pertaining to the position, such as salary requirements, education requirements, percentage of travel required, whether the position is part time or full time, required hours per week, the dates during which the position is open, whether the position is a high priority, medium priority, or low priority position, and any additional information which the hiring contact believes may be pertinent in describing the position to a prospective candidate. The company site program also enables the hiring contact to perform a spell check on the entered information, if desired.

If the hiring contact then selects a command indicating that the data entry has been completed, the company site program will control the computer 42 in step 1060 to display on its display screen a message indicating, for example, that the information has been received and stored, and further indicating that the position will be "posted" in the manner described in detail below. The company site program can then return to controlling the computer to display on its display screen, for example, display screen 60 as shown in FIG. 4.

If the company site program has determined in step 1020 that the add position command key 80 has not been selected, and has determined in step 1030 that a position category has been selected, the company site program in step 1070 will control the computer 42 to continue to display on its display screen a display screen 60 as shown, for example, in FIG. 4. The program will then interpret the selection of a position category as a request by the hiring contact to manipulate (e.g., edit, copy, discontinue, and so on.) a position stored with respect to that position category.

For example, if the hiring contact wishes to take action on a "sales representative" position, the hiring contact selects the symbol (i.e., the "plus" sign) next to the category "sales" by manipulation of a mouse or in any manner known in the art. The company site program will then control the computer to display, on its display screen, a screen 130 as shown, for example, in FIG. 9, in which the different types of sales positions (e.g., sales representative, sales manager—West Coast, and so on.) that have been previously added in the manner discussed above with regard to steps 1020 through 1060 are displayed in a list 132. Of course, the different types of sales positions can be displayed in any particular order or fashion.

The hiring contact can then select the particular position that is to be acted upon (e.g., "sales representative"). The hiring contact can then select a particular command key (e.g., edit position command key 82 from the position tool bar 64), and the selection will be identified by the program in steps 1080 through 1120.

For example, if the company site program determines in step 1080 that the hiring contact has selected the edit position command key 82 and thus wishes to edit the selected position (e.g., the "sales representative" position) that has been selected in steps 1030 and 1070 in the manner described above, the program in step 1082 will control the computer 42 to display on its display screen a screen as shown, for example, in FIG. 8. The hiring contact can then edit the information in step 1084 in the position in a manner similar to that described above in which the hiring contact enters information pertaining to the position. When the hiring contact indicates that the editing has been completed, the company site program will control the computer 42 to display on its display screen a message indicating that the information has been received and stored, and further indicating that the position will be "posted" in the manner described in detail below. In this regard, it is noted that the updated information will automatically be uploaded or reposted to all designated locations. Hence, a hiring contact need not update the positions at each site individually.

If the company site program determines in step 1090 that the hiring contact has selected the duplicate position key 84 and thus wishes to duplicate the existing position that has been selected in the manner described above with regard to steps 1030 and 1070, the company site program in step 1092 will control the computer 42 to display on its display screen a display 136 as shown, for example, in FIG. 10. The hiring contact can then enter the name of the new position which is to be the duplicate of the selected position, and thus create that duplicate new position in step 1094. The hiring contact in step 1096 can then select to edit the new position by

selecting the edit position key **82** of the position tool bar **64** and editing the position information in the manner described above. After these steps have been performed, the company site program will control the computer **42** to display on its display screen a message indicating that the information has been received and stored, and further indicating that the position will be "posted" in the manner described in detail below.

If a position becomes filled or the company is no longer interested in hiring a person for that position, the position can be deactivated by the hiring contact. A deactivated position is stored for access by the company site program, but is not posted in the manner described in detail below. Of course, the company site program can be instructed to deactivate the position automatically based on information (e.g., the dates during which the position is to be active) entered by the hiring contact during the position adding step.

To deactivate a position manually, the hiring contact will select the position in the manner discussed above with regard to steps **1030** and **1070**. Then, if the company site program determines in step **1100** that the hiring contact has selected the deactivate position key **86** from the position tool bar **64**, the company site program will deactivate that selected position in step **1102**. Alternatively, if the company site program determines in step **1100** that the hiring contact has selected a delete position command (not shown) from the positions menu command **134**, the program will delete the position from the list of positions **132**.

Additionally, if the hiring contact wishes to print a position, the hiring contact can select the position in the manner described above with regard to steps **1030** and **1070**, and select the print position key **88** of the position tool bar **64**. The company site program will recognize selection of this key in step **1110**, and control the computer **42** in step **1112** to print the selected position at a printer (not shown).

As discussed above, the company site program typically will store the positions with respect to categories (e.g., sales, marketing), hiring contacts, and geographic locations. Accordingly, if a particular hiring contact is to be used as the contact person for certain positions, it may be necessary to add the name of that new hiring contact to the program.

In the add hiring contact process shown in FIG. **11** beginning at step **1200**, the company site program in step **1210** will monitor the hiring contact key **74** of the administrative tool bar display **62** as shown in FIGS. **4** and **5**. If the company site program determines in step **1220** that the key **74** has not been selected, the monitoring will continue. However, if the company site program determines in step **1220** that the hiring contact key **74** has been selected, the company site program will control the computer **42** in step **1230** to display on its display screen a screen display **140** as shown, for example, in FIG. **12**.

An existing hiring contact can then select a command key **142** (e.g., the "new" key) on the screen display **140**, which causes the company site program to control the computer **42** to display on its display screen a new entry box **144** as shown, for example, in FIG. **13**. In step **1240**, the existing hiring contact can enter in the new entry box **144** and screen display **140** the new hiring contact information, such as the new hiring contact's name, e-mail address, postal address, and the like, which will be used by the program. The new name is then stored and displayed in step **1250** by the company site program in the list of names **146** shown on the screen display **140**.

If a hiring contact wishes to add a location in the add location process shown in FIG. **14** beginning at step **1300**, the company site program in step **1310** will monitor the location address book key **76** of the administrative tool bar display **62** as shown in FIGS. **4** and **5**. If the company site program determines in step **1320** that the key **76** has not been selected, the monitoring will continue. However, if the company site program determines in step **1320** that the location address book key **76** has been selected, the program will control the computer **42** in step **1330** to display on its display screen a screen display **150** as shown, for example, in FIG. **15**.

A hiring contact can then select a command key **152** (e.g., the "new" key) on the screen display **150**, which causes the company site program to control the computer **42** to display on its display screen a new entry box **154** as shown, for example, in FIG. **16**. In step **1340**, the hiring contact can enter in the new entry box **154** and screen display **150** the new location contact information, such as the city, state, country, and the like, which will be used by the program. The new location name is then stored and displayed by the program in the list of names **156** shown on the screen display **150**.

It is noted that if, at any time, a hiring contact wishes to receive help, the hiring contact can select the help command key **78** in the tool bar **62**. In response to this selection, the company site program will control the computer to display various informational commands on its display screen.

In addition, by selecting the log-on command key **70** of the administrative tool bar **62**, a hiring contact can log-on to the program again as himself or herself, or as another hiring contact. That is, in response to the selection of the log on command key **70**, the company site program will control the computer **42** to display on its display screen instructions requesting the hiring contact to enter the name of the hiring contact logging on.

It is noted, for example, that positions are typically stored with respect to a hiring contact responsible for that position. Hence, by logging onto the company site program as another hiring contact, the hiring contact can then access the other hiring contact's positions as would be displayed on a screen display (e.g., screen display **130** as shown in FIG. **9**) for that other hiring contact. Also, by again logging on as himself or herself, a hiring contact can have access to resumes received for those positions as described in detail below.

As described briefly above, once a position has been added, or an existing position has been modified in the manner described above, the company site program will control the computer **42** to automatically upload the added or modified positions to all designated locations, as described in more detail below. Also, the company site program can be used to create a Web site for the company **41** on the World Wide Web on which the positions can be listed. A general description of the World Wide Web and Web Sites (web pages) is set forth in a book by S. Harris and G. Kidder entitled *Netscape™ Quick Tour for Macintosh* (Chapel Hill, N.C.: Ventana Press, Inc., 1995), the entire contents of which are incorporated by reference herein. The Web site can then be accessed by a job seeker's computer (e.g., by a Web browser being run on the job seeker's computer), and the job seeker can search the positions listed on the Web site for a particular desired position. The positions can also be uploaded to the remote site computer **44** as will be discussed in more detail below.

Specifically, in the Web site creating process **51** (FIG. **2**) beginning in step **1400** of the flowchart shown in FIG. **17**, the program in step **1410** will control the computer **42** monitor the web and company settings command key **72** of

the tool bar **62** for selection. If the company site program determines in step **1420** that the command key **72** has not been selected, the company site program will continue to monitor the command key. However, if the company site program determines in step **1420** that the command key has been selected, the company site program will control the company computer **42** in step **1430** to create a Web site for the company which will be accessible on the Web, and then in step **1440** will upload the computer readable file for the Web site via the Internet to the computer responsible for generating the Web site.

That is, the company site program will control the computer **32** to display on its display screen a screen **160** as shown in FIG. **18**. The hiring contact can enter information pertaining to the company in the available spaces in response to the commands set forth on the display screen **160**. The company site program automatically will control the computer **42** to set up the Web site based on the information pertaining to the position and, if desirable, the company in general, as entered by the hiring contact.

For instance, the hiring contact can select the format of the Web site, insert a company logo on the Web site, and provide information pertaining, for example, to the company's benefits plan on the Web site. The hiring contact can further enter an Internet e-mail address on the Web site so that e-mail messages can be sent to the hiring contact, for example, by a prospective applicant accessing the Web site. The Web site can be used as the company's only Web site, or can further be linked to the company's existing home page on the Web.

Typically, the Web site is configured to display the information pertaining to the positions in a brief format and a detailed format. That is, the Web site can include a "results" page, which is a listing of the available positions, and a "position detail" page which provides the more detailed information pertaining to the available positions.

Additionally, the Web site can be configured to include a "search" page. If the job seeker accesses this search page, the job seeker's computer **30** will display commands on its display screen instructing the job seeker to enter information, such as type of position, salary requirements, geographic location, and the like. The computer responsible for hosting the Web site will then search the list of positions to determine if a match exists between any one of those positions and the information entered by the job seeker. The host computer will control the Web site to display a listing of the matching positions on, for example, the results page described above. The prospective applicant can then access the position detail page to access the more detailed information pertaining to those listed positions.

As stated, the company site program can be used to create its own Web page which the company **41** will use to advertise positions that are available. Furthermore, the program can be instructed to upload a computer readable file including information pertaining to those positions to an remote site computer **44** that runs a program (hereinafter "the remote site program") which creates its own Web page that a job seeker can access via the job seeker's computer (e.g., through the use of a Web browser) and search for a particular position.

For example, when the company computer **42** is being controlled by the software to perform an uploading operation **52** (FIG. **2**) beginning at step **1500** in FIG. **19**, the computer **42** will determine in step **1510** whether an external gateway has been configured giving the company computer **42** access to the Internet. If no gateway has been configured, the program will control the company computer **42** to create a gateway in step **1520**.

Once the computer **42** determines that a gateway has been created, a position to be posted can be created in step **1530** by a hiring contact in the manner described above with respect to FIG. **3**. In step **1540**, the hiring contact can then select (e.g., by name) the external site or sites to which a computer readable file including the position information is to be uploaded. The computer readable file is then uploaded to the external site or sites, such as MonsterBoard, CareerMosaic, or the like, in step **1550**.

An external site, such as remote site computer **44**, can also run a program for hosting a Web site on which the uploaded positions can be posted. For example, a service provider at the remote site **43** can maintain a job search program which enables job seekers to perform an employment search at many companies simultaneously. As indicated in operation **52** illustrated in FIG. **2**, the company site program run by the company computer **42** can be instructed to control the company computer **42** to upload a computer readable file including the position information to the remote site computer **44** running the remote site program.

As shown in FIG. **20**, which is a state diagram illustrating examples of the operations **170** that the remote site computer program controls the remote site computer **44** to perform, the remote site program is capable of controlling the remote site computer **44** to perform an uploading operation **172** in which a computer readable file is uploaded from the company computer **42**. As further illustrated, the remote site program controls the remote site computer **44** to perform a job search operation **174**, a personal search agent operation **176**, a job export operation **178** and a content magazine operation **180**, all of which are described in detail below.

As indicated in the flowchart illustrated in FIG. **21**, when the company site program controls the company computer **42** to perform the uploading process **53** (FIG. **2**) beginning in step **1600**, the program in step **1610** controls the computer **42** to read the database in which the position information is stored. In step **1620**, the company site program will then control the company computer **42** to establish a connection, such as a TCP/IP connection or an SMTP mail connection, with the remote site computer **44**, by which the portion of the computer readable file including the position information is uploaded to the remote site computer **44**. It is noted that not all of the detailed information pertaining to the positions is uploaded to the remote site computer **44**. Rather, as described below, the portion of the position file including such detailed information is maintained by the company computer **42**. Also, it is noted that in step **1620**, the company site program can control the company computer **42** to send the portion of the position information file to the remote site computer **44** via e-mail.

The uploaded portion of the computer readable file is then received by the remote site computer **44** in step **1630** and stored by the remote site computer **44** in step **1640** in the manner shown in the flowchart of FIG. **22**. Specifically, in performing the uploading operation beginning at step **1700**, the remote site program controls the remote site computer **44** to perform a validation operation in step **1710** to determine whether uploading of the computer readable file from the company computer **42** is permitted.

If the remote site computer **44** in step **1720** ascertains that the uploading is not permitted, the computer **44** will reject the file in step **1730** and thus, refrain from uploading the file. However, if the remote site computer **44** determines in step **1720** that uploading of that particular file is permitted, the

file uploading is completed in step **1740**, and the file stored in place of any previously stored file including information pertaining to the positions available at company **41**. It is noted that the data is stored as records in a database with data elements corresponding to certain fields in the uploaded data. That is, the job postings each can be stored as individual records in the database with data elements corresponding to certain fields (e.g., salary, location and so on) of the record. The remote site computer **44** then generates a Web site on which the positions are listed and accessible by a job seeker.

The program being run by the remote site computer **44** generates a search page on its Web page which enables a job seeker to enter information pertaining to a particular position in which he or she is interested, and will control the remote site computer **44** to search the posted positions for positions compatible with that information. Specifically, in performing the job search operation **174** beginning at step **1800** shown in FIG. **23**, the job seeker will access the remote Web site hosted by the remote site computer **44** running the remote site computer program. FIG. **24** illustrates an exemplary first page **185** of the remote Web site.

In step **1810**, the remote Web site will provide instructions to the job seeker soliciting information from the job seeker pertaining to the position in which the job seeker is interested. That information may include, for example, type of position, salary expectations, geographic location and the like. In step **1820**, the remote site program will control the remote site computer **44** to compare the entered information with the uploaded information pertaining to the posted positions to determine whether any of the positions are compatible with the job seeker's request.

If one or more matching positions are found, the remote site program will control the remote site computer **44** in step **1830** to display the results of the comparison on the remote Web page. For example, if the job seeker is looking for a sales representative position, the remote Web site will display a summary listing of sales representative positions available at the company **42** from which the position information file has been uploaded.

If the job seeker is not interested in investigating that position further, the remote site program in step **1840** will stop any further searching or displaying operation, and will allow the listed information to be displayed on the Web site. However, if the job seeker is interested in receiving more information about an available matching position, the job seeker can select that particular position (e.g., by manipulation of the mouse on the job seeker's computer, or in any other suitable manner). The remote site computer **44** will detect this selection in step **1840** and, in step **1850**, the remote site program will control the remote site computer **44** to release the job seeker's computer **40** while hyperlinking the job seeker's computer **40** directly to the Web site generated by the company computer **42**.

Accordingly, the job seeker can access this additional information pertaining to the matching position directly from the Web site generated by the company computer **42** without intervention by the remote site computer **44**. The remote site computer **44** therefore need not continue servicing the job seeker computer **40** unless the job seeker returns to the remote Web site.

When the job seeker is linked to the Web site generated by the company computer **42**, the job seeker can peruse the information pertaining to the particular position that he or she has selected which was found as a result of the search performed by the remote site computer **44** hosting the remote Web site. The Web site generated by the company computer **42** will generate a display screen allowing the job seeker an option of forwarding an e-mail or a resume to the company **42** to apply for that available position.

The off-site program is also capable of controlling the off-site computer **44** to perform a personal search agent operation **176** (FIG. **20**) for the job seeker beginning at step **1900** in FIG. **25**. Specifically, if the job seeker select this feature, the information at the remote Web site, which has been created by the remote site computer **44**, causes the job seeker's computer **40** in step **1910** to display on its display screen instructions for the job seeker to enter information pertaining to the position in which the job seeker is interested. The job seeker can also enter information in step **1920** indicating that the "search agent" is to be a constant search agent which monitors new position postings on, for example, a daily basis.

When the information has been entered by the job seeker in steps **1910** and **1920**, the remote site program will then control the remote site computer **44** in step **1930** to compare, on a daily basis, the entered position information with the information pertaining to the positions which has been uploaded to the remote site computer **44** and stored in a data base. If the remote site computer **44** determines in step **1940** that no match between the entered data and the uploaded position information has occurred, no action will be taken.

However, if the computer **44** determines that a match has occurred, the remote site program will control the computer **44** in step **1950** to send a message, such as an e-mail message, to the job seeker's computer **40**. The message includes, for example, the names of the positions and their corresponding companies. The e-mail message further includes hyperlinks embedded therein. Hence, the job seeker can hyperlink to that company's Web site in the manner described above to explore additional information pertaining to the available position. The job seeker can also forward his or her resume to the company **41** via e-mail, facsimile or regular mail, as desired.

Additionally, the remote site program which is run by the remote site computer **44** is capable of controlling the computer **44** to export the uploaded positions to an external site. Specifically, in the exporting operation **178** (FIG. **20**) beginning at step **2000** in FIG. **26**, the remote site program controls the remote site computer **44** in step **2010** to read from the database a file including the position information that has been uploaded from company computers **42**. In step **2020**, the remote site program controls the remote site computer **44** to compare the companies included in the read database to a previously stored list of companies wanting their position information to be exported to other external sites.

The remote site program will control the computer **44** in step **2030** to delete from the read file those positions of companies which do not want their position information exported. Then, in step **2040**, the remote site program will control the computer **44** to export the read file to external site computers via the Internet.

The remote site program is also capable of controlling the remote site computer **44** to send a "magazine" to a subscriber electronically over the Internet. For example, in the magazine sending process **182** (FIG. **20**) beginning in step **2100** in FIG. **27**, the remote site program controls the computer **44** to read a file including a list of subscribers from a database. In step **2120**, the remote site program controls the remote site computer to send the magazine electronically over the Internet to the computers of those subscribers on the list.

Turning now to the handling of resumes by the company computer **42**, it is noted that the company site program controls the company computer **42** to perform the operations **48** and **50** (FIG. 2) of receiving and handling the resume beginning at step **2200** in FIG. **28**. The company site program can be configured to control the company computer **42** to automatically send an e-mail to the job seeker informing the job seeker that the resume has been received. The company site program will then control the computer **42** to determine in step **2010** whether the received resume is in e-mail format.

If the resume is in e-mail format, or any popular word processing format, such as Microsoft™, Word™ or WordPerfect™ (e.g., sent as an attachment to the e-mail), then the company site program will control the company computer **42** to perform an HTML and text conversion process on the data representative of the resume in step **2020** before the resume is stored in the database in step **2030**. If the resume is not in an e-mail format, but rather has been determined in step **2040** to have been received as a fax or scanned image, an OCR conversion will be performed in step **2050** prior to the HTML and text conversion step so that the converted resume can be stored in the database in step **2030**.

The company site program will typically control the company computer **42** to store the resume in relation to the position for which the job seeker is applying, and further, in relation to the hiring contact responsible for that position. Hence, if the job seeker is applying for a sales representative position, the resume will be stored in a file which relates to that sales representative position. The company site program can control the company computer **42** in step **2060** to access and display a stored resume on its display screen. An example of the resume displaying and handling process is described beginning at step **2300** in the flow chart shown in FIG. **29**.

In viewing a screen as shown, for example, in FIG. **4**, the hiring contact in step **2310** will select the position for which he or she wishes to view received resumes in a manner similar to that described above with regard to steps **1030** and **1070** in FIG. **3**. For example, if the hiring contact wishes to view the resumes received for the sales representative position, the company site program will control the company computer **42** to display on its display screen a screen display **190** as shown, for example, in FIG. **30**. A brief description **192** of the position appears on a portion of the screen display **190**.

In step **2320**, the hiring contact can then select the position to cause the company site program to control the computer **42** to display on its display screen a screen **200** including a list **202** of resumes received for that position as shown, for example, in FIG. **31**. The resumes are listed by name of applicant. The hiring contact can then select a particular resume for display in step **2330**, and the company site program will control the computer **42** to display the resume on a portion **204** of the screen as shown in FIG. **31**.

Once a resume has been selected, in step **2340** the hiring contact can utilize the control keys on the resume tool bar **66** as shown, for example, in FIG. **7**, to manipulate the resume as desired. For instance, the hiring contact can rate on score the resume to indicate whether the applicant is suitable for the position. To do this, the hiring contact will select the score resume key **90** of the resume tool bar **66**. Upon selection of the score resume key **90**, the company site program will control the computer **42** to display on its display screen a screen display **210** as shown in FIG. **32**. The hiring contact can then enter information in response to the displayed information on the screen to score the resume in the appropriate manner depending on the suitability of the candidate for the position. The scoring will appear as a mark **206** next to the resume as shown, for example, in FIG. **31**.

A selected resume can also be e-mailed to anyone with an Internet e-mail address. To perform this function, the hiring contact will select the e-mail resume control key **92** on the resume tool bar **66**, which causes the program to control the computer **42** to display on its display screen a screen display **220** as shown in FIG. **33**. The hiring contact can then enter in the spaces provided on the screen display **220** the Internet e-mail address of the person to which the resume is to be sent.

A selected resume can also be sent via e-mail to a secondary hiring contact. This secondary contact is defined in advance. When the hiring contact selects the email to secondary contact control key **94** on the resume tool bar **66**, the program will control the computer **42** to display on its display screen a screen display **230** as shown, for example, in FIG. **34**, with the secondary hiring contact's e-mail address automatically appearing in the "To:" location. The hiring contact can also enter a message to be sent with the resume.

The hiring contact can also send a reply to a candidate by selecting the reply to candidate control key **96** of the tool bar **66**. In doing so, the company site program will control the computer **42** to display on its display screen a screen display **240** as shown in FIG. **35**, with the e-mail address of the candidate automatically appearing in the "To:" section. The hiring contact can then enter a message to the candidate in the box provided. The company site program will control the computer **42** to forward the reply to the candidate in an e-mail format via the Internet. A message, such as a form rejection letter, also can be imported from a database into the e-mail message prior to transmission.

By selecting the export resume to disk key **98** on the resume tool bar **66**, the hiring contact can cause the company site program to control the computer **42** to save the selected resume to any particular drive, such as a hard drive, floppy disk, or the like. The selected resume also can be printed by selecting the print resume key **100**.

Furthermore, the hiring contact can select the delete resume control key **102** of the tool bar **66** to manually delete the selected resume. Alternatively, the company site program can be configured to automatically delete a resume after a selected period of time from receipt (e.g., 180 days), or to save the resume indefinitely if desired. The resume can also be copied to another position if, for example, the person applying for one position is also qualified for that other position.

The hiring contact can also search for a particular resume by selecting the find resume control key **104** on the resume tool bar **66**. In response to the selection of key **104**, the company site program will control the computer **42** to display on its display screen a screen display **250** as shown, for example, in FIG. **36**. The hiring contact can then enter the key word information in the location **252** provided on the screen display **250**, and the company site program will control the computer **42** to search the resumes in the database to find any which contain that key word. The resumes containing the key word will appear on a screen display **260** as shown in FIG. **37** which is displayed on the display screen of the computer **42**. Those resumes can then be selected for display on the display screen of the computer **42**. The program further can be instructed by the hiring contact to control the computer **42** to generate a position activity report summarizing the activity for each position.

The program is further capable of controlling the company computer **42** to perform a resume gateway creating operation **52** (FIG. **2**) beginning at step **2400** in FIG. **38**. The computer **32** will determine in step **2410** whether an external gateway has been configured giving the company computer **32** access to other sites, such as CareerMosaic, MonsterBoard, and the like, via the Internet. If no gateway has been configured, the program will control the company computer **32** to create a gateway in step **2420**.

Once the computer **32** determines that a gateway has been created, the gateway attributes can be configured in step **2430** by a hiring contact. In step **2440**, the hiring contact can then select (e.g., by name) the external site or sites to which a computer readable file including the resumes is to be uploaded. Hence, the resumes are effectively copied to the external site or sites.

Although only a few exemplary embodiments of this invention have been described in detail above, those skilled in the art will readily appreciate that many modifications are possible in the exemplary embodiments without materially departing from the novel teachings and advantages of this invention. Accordingly, all such modifications are intended to be included within the scope of this invention as defined in the following claims.

What is claimed is:

1. An employment recruiting method, comprising the steps of:

receiving first computer readable data, representing information pertaining to a job, provided by a job seeker user via a computer network;

automatically periodically comparing said first computer readable data to second computer readable data including job opening data representing information pertaining to at least one job opening; and

sending said job seeker user a message informing said job seeker user when said comparing step determines that said first computer readable data matches at least a portion of said second computer readable data, said message including a link to a site at which additional data pertaining to said job opening is accessible by said job seeker user via said link.

2. An employment recruiting method as claimed in claim **1**, wherein:

said message is an e-mail message.

3. An employment recruiting method as claimed in claim **1**, wherein:

said comparing step compares said first computer readable data to said second computer readable data at periodic intervals as designated by said job seeker user.

4. A method as claimed in claim **1**, wherein:

said comparing step compares said first computer readable data to said second computer readable data in response to a request by said job seeker.

5. A system for performing employment recruiting via a computer network, comprising:

a data receiving component, adapted to receive first computer readable data, representing information pertaining to a job, is provided by a job seeker user via said computer network;

a comparator, adapted to automatically periodically compare said first computer readable data to second computer readable data including job opening data representing information pertaining to at least one job opening; and

an informing component, adapted to provide a message to said job seeker user to inform said job seeker user when said comparator determines that said first computer readable data matches at least a portion of said second computer readable data, said message including a link to a site at which additional data pertaining to said job opening is accessible by said job seeker user via said link.

6. A system as claimed in claim **5**, wherein:

said message is an e-mail message.

7. A system as claimed in claim **5**, wherein:

said comparator compares said first computer readable data to said second computer readable data at periodic intervals as designated by said job seeker user.

8. A system as claimed in claim **5**, wherein:

said comparator is adapted to compare said first computer readable data to said second computer readable data in response to a request by said job seeker.

9. A computer readable medium of instructions, comprising:

a first set of instructions, adapted to control a computer system to receive first computer readable data, representing information pertaining to a job, provided by a job seeker user via a computer network;

a second set of instructions, adapted to control said computer system to automatically periodically compare said first computer readable data to second computer readable data including job opening, data representing information pertaining to at least one job opening; and

a third set of instructions, adapted to control said computer system to send a message to said job seeker user to inform said job seeker user when said first computer readable data is determined to match at least a portion of said second computer readable data, said message including a link to a site at which additional data pertaining to said job opening is accessible by said job seeker user via said link.

10. A computer readable medium of instructions as claimed in claim **9**, wherein:

said message is an e-mail message.

11. A computer readable medium of instructions as claimed in claim **9**, wherein:

said second set of instructions controls said computer system to compare said first computer readable data to said second computer readable data at periodic intervals as designated by said job seeker user.

12. A computer readable medium of instructions as claimed in claim **9**, wherein:

said second set of instructions is adapted to control said computer system to compare said job seeker.

* * * * *

US006370510B1

(12) **United States Patent**
McGovern et al.

(10) **Patent No.: US 6,370,510 B1**
(45) **Date of Patent: *Apr. 9, 2002**

(54) **EMPLOYMENT RECRUITING SYSTEM AND METHOD USING A COMPUTER NETWORK FOR POSTING JOB OPENINGS AND WHICH PROVIDES FOR AUTOMATIC PERIODIC SEARCHING OF THE POSTED JOB OPENINGS**

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(73) Assignee: **CareerBuilder, Inc.**, Reston, VA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

This patent is subject to a terminal disclaimer.

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Related U.S. Application Data

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(51) **Int. Cl.**[7] **G06F 17/60**
(52) **U.S. Cl.** **705/1**
(58) **Field of Search** 705/2, 10, 26, 705/27; 707/10, 104; 709/201, 203, 219

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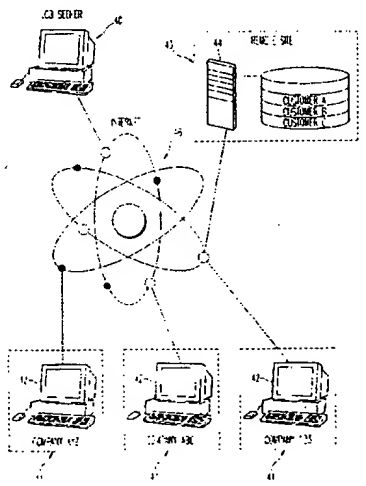
Assistant Examiner—Hani M. Kazimi
(74) *Attorney, Agent, or Firm*—Roylance, Abrams, Berdo & Goodman, LLP

(57) **ABSTRACT**

A method and apparatus for providing an interactive computer-driven employment recruiting service. The method and apparatus enables an employer to advertise available positions on the Internet, directly receive resumes from prospective candidates, and efficiently organize and screen the received resumes. The method and apparatus further is capable of monitoring employment advertisements for a job seeker and automatically notifying the job seeker when a position for which the job seeker is suitable becomes available. The method and apparatus further enables a plurality of companies to advertise job positions at a single location accessible via the Internet by a job seeker, and enables the job seeker to communicate directly with a company via the Internet if the job seeker is interested in exploring further information pertaining to an available position at that company.

12 Claims, 31 Drawing Sheets



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US006381592B1

(12) **United States Patent**
Reuning

(10) **Patent No.: US 6,381,592 B1**
(45) **Date of Patent: *Apr. 30, 2002**

(54) **CANDIDATE CHASER**

(76) Inventor: **Stephen Michael Reuning**, 510 Horizon Center, Robbinsville, NJ (US) 08691

(*) Notice: This patent issued on a continued prosecution application filed under 37 CFR 1.53(d), and is subject to the twenty year patent term provisions of 35 U.S.C. 154(a)(2).

Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **08/984,650**

(22) Filed: **Dec. 3, 1997**

(51) **Int. Cl.**[7] **G06F 17/60**

(52) **U.S. Cl.** **707/3**; 707/10; 707/104; 705/1

(58) **Field of Search** 705/1, 7, 8, 9; 707/3, 10, 104; 709/206, 50

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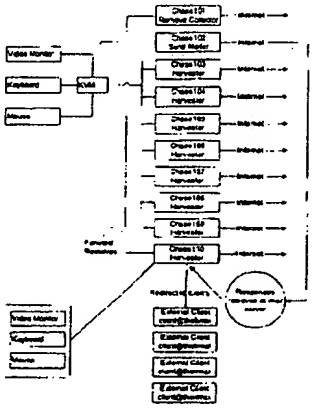
(57) **ABSTRACT**

The Candidate Chaser machine and method automatically locates Internet site pages and web postings which contain operator specified keywords or Boolean combinations and then extracts all electronic mail addresses from those pages as well as hyper-linked pages to as many linking levels as selected by the operator and then sends a job opportunity description in the form of an electronic mail message to each of the extracted addresses then receives responses from recipients of the job opportunity message then filters those messages by reading their text and forwards only desired responses to the candidate seeking client's electronic mail address thusly sparing the client interaction with large amounts of irrelevant response while presenting viable candidates for a given job opening. It applies a distinctive and non-obvious method for delivering identical electronic mail messages to a group of targeted potential job candidates sharing a specifically desired single or set of common experiences, interests, capabilities, professional titles or talents relating to the needs of the candidate seeking hiring entity and handling their response.

15 Claims, 2 Drawing Sheets



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Are you sending qualified candidates to your competitors? by Debbie McGrath, President, The CEO Group Inc., Attached as Prior Art Document #42 Located on p. 215.

* cited by examiner

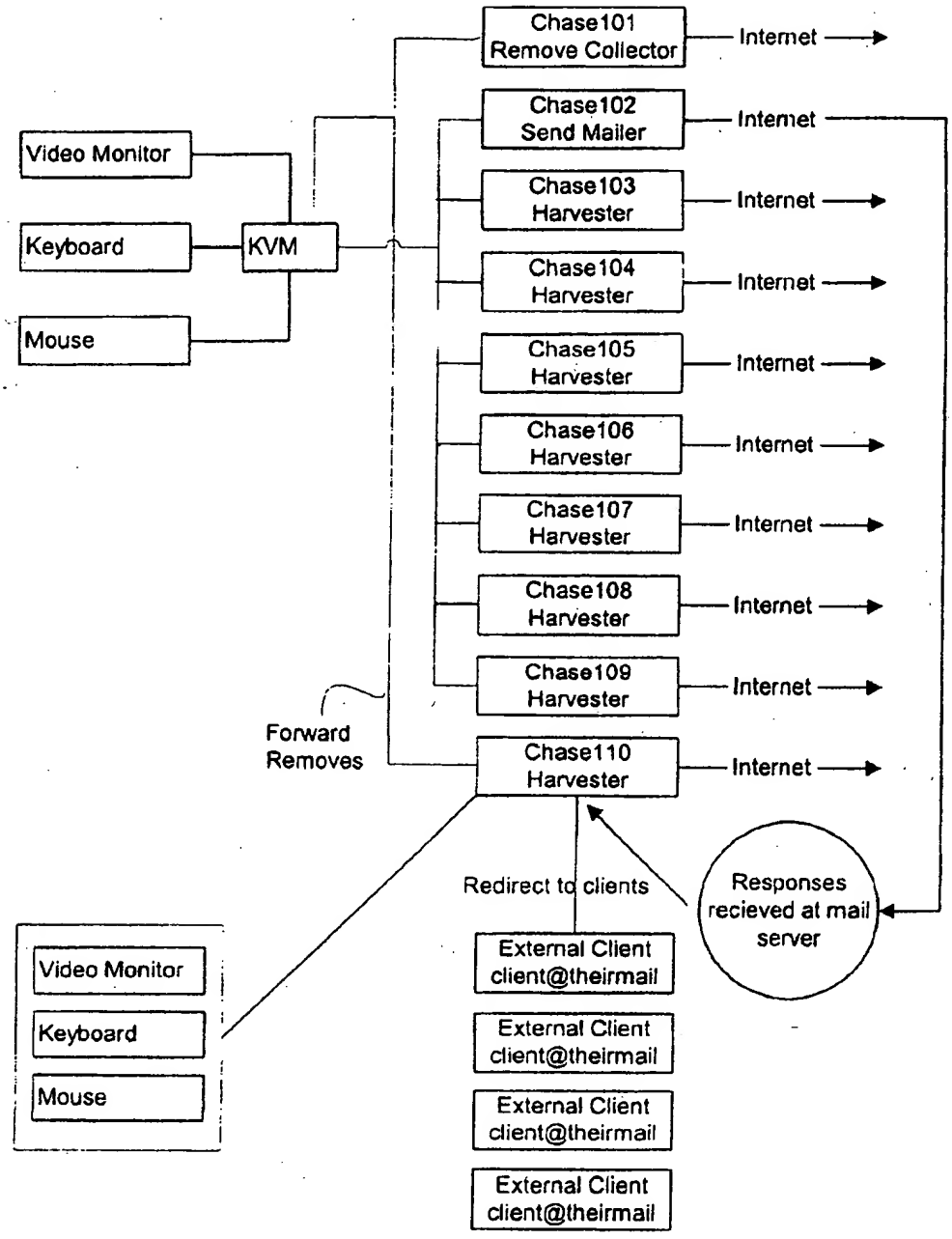
Chase101
Remove Collector
Internet
Chase102
Send Mailer
Internet
Video Monitor
Chase103
Harvester
Internet
Keyboard
KVM
Chase104
Harvester
Internet
Mouse
Chase105
Harvester
Internet
Chase106
Harvester
Internet
Chase107
Harvester
Internet
Chase108
Harvester
Internet
Chase109
Harvester
Internet
Forward
Removes
Chase110
Harvester
Internet
Redirect to clients
Responses
recieved at mail
server
Video Monitor
Keyboard
Mouse
External Client
client@theirmail
External Client
client@theirmail
External Client
client@theirmail
External Client
client@theirmail

FIG. 1

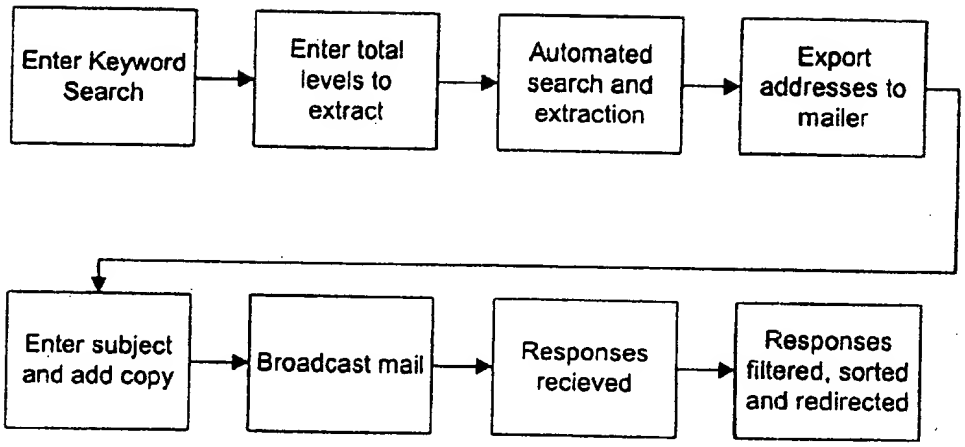
Enter Keyword Search
Enter total levels to extract
Automated search and extraction
Export addresses to mailer
Enter subject and add copy
Broadcast mail
Responses recieved
Responses filtered, sorted and redirected

FIG. 2

CANDIDATE CHASER

BACKGROUND—FIELD OF INVENTION

This invention relates to the process of recruiting new employees, specifically harvesting email addresses belonging to potential viable candidates from sites and postings searched for and found on the Internet and sending specifically related help wanted advertisements via electronic mail to those addresses then receiving, filtering, sorting and distributing the response.

BACKGROUND—DESCRIPTION OF PRIOR ART

Classified help wanted advertising in print, television and radio media as well as postings of help wanted advertisements on Internet web sites are a common practice. Such mediums for prospecting employment candidates are passive in the context of the candidate seeker's objectives. They require the reaction of a potential job seeker who must be reading a specific periodical, watching or listening to a specific broadcast or visiting a specific internet web site or requested a specific push technology internet broadcast. There are too many job opportunity broadcasts and sites available for any job seeker to peruse even a minor percentage on a timely basis. A candidate seeker could attempt to advertise through every applicable site and medium in order to reach every potential candidate however such a strategy is impractical if not impossible. Even if it were practical or possible the candidate seeker would not reach viable candidates who are not actively searching job opportunity advertising sites. The United States Federal Government predicts demand for technical labor in such areas as information technology, sciences, biotechnology and engineering to exceed supply by as much as fifteen percent by the year 2002. In such a situation competitive employers require more aggressive means to prospect employment candidate than the prior mentioned passive methodologies.

Bulk electronic mailing is a common process used to broadcast messages to groups of email addresses collected in databases however the processes used prior to Candidate Chaser are static and the targeting is dependent on pre-assembled databases of email addresses. In such cases where email address lists are procured from a database sources mailers are subject to limited accuracy on two categories: first, are the addresses still active, second, are the individuals interested in receiving email related to the mailers' offerings. Furthermore, the present state of electronic mail address databases does not permit the targeting of addresses based on the individual owner's experiences, interests, capabilities, professional titles or talents.

While bulk electronic mailing is unquestionably legal, there is a powerful lobby opposing general broadcasts of large untargeted and unsolicited bulk electronic mailings which consume huge amounts of internet communication bandwidth causing system delays, increased cost without benefit and mail server failures. Such mailings are broadcast to high quantities, 50,000–200,000 addresses at a time, in the hopes that a fraction, perhaps one tenth of a percent will reach a viable and interested audience. Most of the bandwidth consumption would not be necessary if a more targeted approach was used.

Employers spend over a billion dollars every year in the United States on employment agency fees, classified advertising costs, recruiting staff, the design of recruitment programs and software and referral bonus programs. Many of those employers are large companies that have invested

tremendous development resources into solving their recruiting problems and cost reduction yet not a single one of them has created an automated recruiting system like the Candidate Chaser machine and process patented herein. The articles attached and labeled as Prior Art Documents #27, 34, 35, 36, 37, 38, 39, 40, 41 and 42 indicate a recruiting industry searching for internet solutions to recruiting difficulties yet none suggest a solution similar to that presented by the Candidate Chaser machine and process supporting the position of unobviousness relating to the Candidate Chaser machine and process.

Most workers would like to be informed of employment opportunities with quality of life improving advantages including but not limited to compensation increases, advanced training, enhanced benefits, more challenge, diversity and improved career path provided notices of such opportunities were made at the workers' convenience and that workers are not overwhelmed with non-applicable job offerings. Employment agencies and headhunters serve such a purpose but they are prohibitively expensive. No automated and more cost effective alternative was available until the herein described Candidate Chaser was invented.

Present job opportunity advertising systems take days and weeks to reach potential candidates.

While my research indicates no present use of bulk electronic mail for targeted help wanted advertising, use of available bulk email systems would result in "bad address" responses from servers, remove responses, and revenge "flames" from anti-spammers burdening and crashing the advertisers' incoming electronic mail system.

A search of the IBM Patent Server at http://patent.womplex.ibm.com looking for the following words individually in the "abstract" field: recruit, recruiting, hire, hiring, job, candidate, classified, position, bulk, addresses, and recruitment turned up no relevant matching or related patents. A search on the same database for the phrase "electronic mail" turned up no apparently related patents except those patenting the process of sending and receiving electronic mail itself. The patent information and abstract which appear most closely related are attached and labeled as: Prior Art Document #28 U.S. Pat. No. 5,245,532, Prior Art Document #29 U.S. Pat. No. 5,040,141, Prior Art Document #30 U.S. Pat. No. 5,632,018, Prior Art Document #31 U.S. Pat. No. 5,408,334, Prior Art Document #32 U.S. Pat. No. 5,487,100, and Prior Art Document #33 U.S. Pat. No. 5,613,108.

A search for articles and publications discussing "recruiting on the Internet" turned up two hundred forty nine separate documents. While discussing the use of electronic mail for the circulation of resumes and discussion of job possibilities, no reference is ever made to any recruiting solution that even remotely resembles the Candidate Chaser machine and process. I believe this supports the unobviousness of the Candidate Chaser machine as a solution to recruiting difficulties. Those articles which best represent present art on the subject of "recruiting on the Internet" are attached and labeled as Prior Art Documents #27, 34, 35, 36, 37, 38, 39, 40, 41 and 42.

There are a good number of commercially available computer software programs which can perform certain functions of the Candidate Chaser machine. However, none of them alone or in obvious combination accomplish the task of the Candidate Chaser. The said commercially available computer software programs are described in the attached Prior Art Documents #1, 2, 3, 4, 5, 6, 7, 18, 19, 20, 21, and 22.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is an overview of a computer local area network suitable for practicing my invention.

FIG. 2 is an overview of an alternative computer system suitable for practicing my invention, where a local area network is optional.

OBJECTS AND ADVANTAGES

The Candidate Chaser machine automatically locates Internet site pages and web postings which contain operator specified keywords or Boolean combinations and then extracts all email addresses from those pages as well as linked pages to as many linking levels as selected by the operator and then sends a job opportunity description enclosed in an electronic mail message to each of the extracted addresses then receives responses from recipients of the job opportunity message then filters those messages by reading their text and forwards only desirable responses to the candidate seeking client's electronic mail address thusly sparing the client interaction with large amounts of irrelevant response while presenting viable candidates for a given job opening.

The Candidate Chaser machine operator inputs keywords then commands the Candidate Chaser machine to interact with the infinite number of interface possibilities available on the Internet. The operator is not required to conduct or observe the cumbersome, tedious, frustrating and agonizingly slow task of reviewing data contained on Internet web sites, newsgroup postings and other data sources that may exist from time to time on the net. Once started the Candidate Chaser machine conducts the Internet search without operator intervention.

The Candidate Chaser process does not use a static database as its source of addresses but instead takes advantage of the dynamic properties of the Internet where new information is added every minute somewhere on the planet. Candidate Chaser does this by reading internet sites online and extracting email addresses as they appear on targeted sites, postings and broadcasts just prior to broadcasting a job opportunity advertisement

Job opportunity announcements are communicated to potential candidates within hours.

Candidate Chaser job opportunity advertisements are delivered directly to the worker's email box therefore she/he is not required to search for applicable job offerings.

Workers view the Candidate Chaser job opportunity advertisement by choice at their convenience any time night or day since the advertisement arrives and resides in the email message box until they take an action or their software automatically discards it based on their previously set filters.

Job opportunity advertisements broadcast by Candidate Chaser stimulate workers to consider new career opportunities even when they are not actively seeking new employment thusly expanding the universe of candidates beyond those available to the employer through passive advertising methodologies.

Specific job opportunity ads are only broadcast to specifically applicable individuals who made their email addresses available on their resumes, on web pages indicating subject matter related to the job opening or on new group postings where subjects related to the job opening were specifically discussed.

Individuals adverse to receiving additional job opportunity advertisements easily eliminate their addresses from any potential future mailings by typing "remove" into the message subject heading and executing their mail programs "reply" command.

The customized harvesting of email addresses focused on the specific needs of each job opportunity advertisement individually results in relatively low quantities of advertisements broadcast. And much less broadcast bandwidth waste due to non-applicable recipients.

The Candidate Chaser process costs less per hire to operate than other recruitment methods.

Responses to electronically mailed advertisements are automatically processed through software filters: protecting job opportunity advertisers from "flames", storing removal committed addresses into a universal database, and sorting qualified responses to the appropriate hiring authorities email box.

SUMMARY

The Candidate Chaser process uses a combination of publicly available and proprietary software computer programs and generally available computer hardware and computer peripherals to operate as a single unit as a means to harvest email addresses of specifically targeted individuals based on their work experiences and interests, then broadcasts a job opportunity advertisement to the recipients at the harvested addresses and then appropriately sorts and redirects consequential response to remove databases, or to quality control functions or to clients' electronic mail addresses and deletes responses from the virtual mail server.

DESCRIPTION FIG. 1 and FIG. 2

The Candidate Chaser machine hardware description herein is for illustration purposes only. It should be noted that the number of general purpose computer processors and the method for interfacing them, for example KVM's (Keyboard, Video, Mouse switch) used, may vary depending on the required capacity and improvements in hardware available. Factors that would affect required capacity include but are not limited to the number of outgoing mailings projected on a daily basis, the size of the address collection lists to which the messages will be directed, the frequency of mailings and the number of responses expected.

While the number of general purpose computer processors included in a single Candidate Chaser unit may be increased, perhaps infinitely, the unit always requires at least one general purpose computer processor unit. The Candidate Chaser machine unit always requires the same types of software working in combination as described herein as the candidate chaser process.

The first Candidate Chaser unit constructed and described herein was assembled from single general purpose computers installed with the Windows 95 Operating System.

Systems other than Windows 95 could be used to conduct the candidate chaser process. Other widely accepted operating system platform such as Unix, OS2, and Macintosh as well as any operating system platforms that may come available from time to time could be used provided they meet the ability to allow for the operation of computer software programs necessary to the outcome of the Candidate Chaser process.

The Candidate Chaser machine presently in operation consists of ten general purpose computers manufactured by the Compaq computer company each equipped with a 150 mhz pentium processors by Intel, 24 megabytes of ram, a 1.4 gigabyte hard-drives and 28.8 k internal modem. The units

are stacked together one on top of the other, held together by a computer rack that is attached to a platform with four sets of swiveling wheels. Attached to the rack above the ten general purpose computer processors are two video monitors one placed above the other. The computer monitors are also manufactured by Compaq computer company. Above the monitors are three switches commonly known as KVM's manufactured by a company called Belkin which are used to switch the keyboard and monitor and mouse interfaces from one general purpose computer to another. The purpose of the KVM configuration is to reduce the need for monitors, mouse's, and keyboards. The operator of the Candidate Chaser machine unit and process requires the use of a monitor and keyboard to interface with the individual general purpose computers only at certain times during the process. Therefore, it is not necessary to have a number of keyboards mice, and monitors equal to the number of general purpose computers.

Specialized cabling connects the computers to the KVM switches and the KVM switches to the monitors, mice, and keyboards. The RJ11 modem ports are connected by cable to ten separate telephone trunk lines installed by the telephone company on the walls of the facility where the Candidate Chaser machine is operated.

A substitute for the modem connections could be a network connection, such as ethernet, to a router and subsequent ISDN, T1 or fraction thereof, T3 or fraction thereof, or any other telecommunication link to the Internet that may be available.

Attached to the front of the Candidate Chaser machine is a platform that is approximately 36 inches by 12 inches providing a flat surface on which the two keyboards and two mice can rest. The platform is attached to a swivel mechanism so the keyboard height may be adjusted for the comfort of the Candidate Chaser machine and process operator.

To provide for a means of organized reference and procedure manuals, during communication regarding the process and descriptions the individual general purpose computers are labeled as follows: chaser **101**, chaser **102**, chaser **103**, chaser **104**, chaser **105**, chaser **106**, chaser **107**, chaser **108**, chaser **109**, chaser **110**.

Chaser **101** is used to receive mail forwarded from chaser **110**. Chaser **110** forwards certain pieces of received mail to chaser **101** so that a program installed on chaser **101** can extract the address from the any received message then store the address in a text file so that it may be imported at another time into a file labeled the "remove file" that is referred to later in the process. Chaser **101** is programmed to use an Internet connection to a mail server so it may download electronic mail messages sent to said server by chaser **110**. A software computer program called "Replyman" manufactured by ExtractorPro (see Prior Art Document #7) is installed on chaser **101** and serves the purpose to extract the addresses from the downloaded messages and store them into a text file. It is not required that the software "Replyman" be used to execute this process. A programmer experienced in this technology could write a simple program to perform this task using any of an assortment of language compilers such as C, Basic, Assembler, or Cobol.

Chaser **102** is configured to establish a connection with a server providing smtp access for the purpose of delivering electronic mail. A software program called "ExtractorPro Mailer" is installed for the purpose of importing data from text files created by the other chaser harvesting units which are installed on chaser **103**, **104**, **105**, **106**, **107**, **108**, **109**. Chaser **102** is equipped with the mailing program so that it may import the addresses from the text files, provide for the compilation of a job opportunity advertising message, a subject and a from field. The software also completes the broadcast of the message to all the extracted addresses through a smtp channel or multiple smtp channels over the Internet. In addition to ExtractorPro mailing program there are similar computer software programs available to accomplish the same purpose as ExtractorPro's. Those computer programs included but are not limited to computer software packages called Mach10, Stealth, and NetContact. The capabilities and details regarding these computer software programs are included in the Prior Art Documents attached to this application. Chaser units **103**, **104**, **105**, **106**, **107**, **108**, and **109** are installed with computer program software called "WebWeasel" which is described in the attached Prior Art Document #7. Based on operator commands, the WebWeasel software executes a search of the Internet seeking web sites that contain the keywords entered by the Candidate Chaser Machine and Process operator and then download the text of the discovered web sites into the memory of the general purpose computer and then compare the text of the web site to an algorythm that recognizes a combination of characters which represent an electronic mail address and then store the electronic mail addresses into a database or text list for export to the mailing broadcast computer software at a later stage in the process. The Candidate Chaser Machine must be installed with computer software program that will enable it to search for web sites containing operator entered keywords and extract electronic mail addresses from the discovered web sites. It is not necessary for a Candidate Chaser Machine to be equipped with "WebWeasel" computer software. There are other computer software programs available including but not limited to: Sonic, Web Collector, and Net Contact which are described in the Prior Art Documents attached to this application.

OPERATION AND PROCESS DESCRIPTION
FIG. 1 and FIG. 2

The typical Candidate Chaser machine consists of one or more general purpose computers equipped with microprocessor, ram, hard disk drive, a communication interface that links the computer(s) to the Internet, one or more keyboards and mouse interface, one or more monitors, and software to be described later. If one monitor is used with multiple computers then a KVM keyboard mouse monitor switch box is employed so operator may switch monitor and keyboard interfaces between computers.

The general purpose computers are physically connected to a network router that can consist of simple analog modems connected to simple telephone lines or more complex digital routing methods but in all cases access to the Internet is necessary.

Installed commercially available "offline browsing" computer software enables the operator to instruct the machine to locate websites and postings, accessed via the internet, which contain operator specified keywords or Boolean combinations and then to download and store the address of the located matching websites and postings into memory. The address is in the format of the URL (Universal Resource Locator)or other address indicator protocols used on the Internet. The machine immediately or at another time downloads the text from the files at the addresses which were located and stored in memory.

The keywords and Boolean combinations entered into the machine should be closely related to the experiences, interests, capabilities, professional titles or talents desired in applicable job candidates.

The operator may instruct the machine to locate Hyper Text Markup Language Links, which are embedded addresses to other files on the Internet, on any of the website pages or postings turned up by the search. The operator may instruct the machine to follow the Links to their respective sites and locate more links at those sites. The operator may instruct the machine to follow the links as many level as desired. The number of link levels to search are determined by the focus required of the collection of addresses sought.

Once the text of a site or posting is downloaded the machine searches the text of the downloaded file for character strings representative of electronic mail addresses and saves those addresses in memory or disk storage. Presently, the electronic mailing protocol dictates that a filtering algorithm be used as follows: extract any string of characters that fits "space"_*@*.*_"space" where "*" is a wildcard variable representing any combination of characters.

The machine continues to download and store site and posting addresses and download and store text into memory and extract addresses without continued operator action until all applicable extractions are completed or the operator instructs the machine to stop.

Collections of addresses may be stored in separate electronic storage files for repeated retrieval at later times.

Since the collected addresses are extracted from sites and postings containing the specified keywords or Boolean combinations, it is reasonable to predict that a consequential number of those addresses will belong to individuals with experiences, interests, capabilities, professional titles or talents related to those keywords or Boolean combinations.

Installed commercially available electronic mailing computer software enables the operator to instruct the machine to deliver a specific job opportunity advertising message to each address collected into a specific file. The operator types the copy into the machine keyboard interface and then instructs the machine to send the message to a specific collection of addresses at a specified time.

Each message has a "From" field and a "Reply to:" field in addition to others. When electronic mail messages are received, recipients look to the "From" and "Reply to:" fields for instructions relating to sending response messages. The operator of the Candidate Chaser machine and process may insert any electronic mail address into the "From" and "Reply to:" fields as she/he may desire. The Candidate Chaser machine is designed to handle many mailings at one time and could be used to serve multiple candidate seeking hiring clients. In the case of multiple clients, the "From" and "Reply to:" fields could contain the electronic mail address of the client for each given job opportunity message. Thus, each client would receive response to their message directly.

There are reasons why the operator of the Candidate Chaser machine might want to filter responses before received by the client. First, a significant percentage of the response is error messages due to the fact electronic mail addresses are terminated often without forwarding instructions. Second, a percentage of responses are requests to be removed from future mailings. Third, a significant percentage of messages are "thanks but no thanks but keep me notified of other stuff" responses. Fourth, a percentage of responses are notifications that the recipient is forwarding the message to someone that might be more interested. Fifth, only a small percentage of responses are from candidates that are interested in applying for the job.

In order to filter responses before they are directed to the client's electronic mail address the following procedure is used: A domain name is registered with InterNIC and the IP address location of a virtual mail server is designated. The virtual mail server is programmed to deliver all mail to one user logon at a specified POP3channel. A single "Virtual Mail Server" (VMS) can be maintained on an Internet Service Provider (ISP) host for each Candidate Chaser machine or on a private server. The VMS is designated by a domain name registered with Internic, for example "abcd123.com". Candidate Chaser clients are assigned Mail Accounts to the domain by the Candidate Chaser machine operator, for example 1001@abcd123.com. A Master User Name (MUN) for the domain on the VMS, for example smr@abcd123.com, programmed to download all mail received into the account no matter what the prefix, is programmed into the server. Electronic mail messages to potential candidates contain the client's assigned VMS mail account in the "Reply" field so that responses are directed to the domain and received into the virtual mail server's storage. Consequently, the "To;" field in the response message contains the client's mailing account address at the Candidate Chaser virtual mail server domain. Mail, directed to different clients based on the address in the "To:" field, is downloaded from the VMS in a single COMBINED batch using the mail computer software program to accessing the MUN account. The mail program filters and redirects the electronic mail message based on the filters and filter actions listed in the paragraphs that follow.

Mail containing spam complaints or requesting removal from lists are directed to the Candidate Chaser machine's remove list creating computer software program, which presently is ExtractorPro Reply Man but can be any similar performing software package, so the addresses are automatically added to the Candidate Chaser machine's remove list and NOT forwarded to the client. Error messages indicating non-deliverable messages are deleted and NOT forwarded to clients.

Messages containing resumes and curriculum vitae are forwarded to a designated resume collection electronic mail address. Any messages that were not forwarded to the remove site or deleted for non-delivery are forwarded to the client's personal mail address at their mail server, for example: sally@aol.com. Mail that doesn't match any filter is forwarded to the quality control staffs' mail address so they can inspect it and determine whether filters need adjustment.

Filters are set up using the "Filters" command language of any commercially available filter capable mailing computer software program. The following filter program is designed for a Candidate Chaser machine using ten general purpose computers where the computers are referenced by a sequencial labeling system with the labels as follows: Chase**101**, Chase**102**, Chase**103**, Chase**104**, Chase**105**, Chase**106**, Chase**107**, Chase**108**, Chase**109**, Chase**110**, where the unit referenced as Chase**101** receives messages containing electronic mail addresses designated for addition the remove list

1. Checking Mail option=leave mail on server (Mail will be removed from server by filter actions only.)
2. Every filter is programmed to execute on "incoming" mail only.

2.1. Filters

2.1.1. Removes to Chase**101**

2.1.1.1. Subject contains "remove" or "spam" action equals make subject "Remove" then action equals redirect to chase101@domain.com then server option equals "delete" then action equals "Skip Rest".

2.1.1.2. Subject contains "unsubscribe" or "junk" action equals make subject "Remove" then action

equals redirect to chase101@domain.com then server option equals "delete" then action equals "Skip Rest".

2.1.1.3. Subject contains "garbage" or "trash" action equals make subject "Remove" then action equals redirect to chase101@domain.com then server option equals "delete" then action equals "Skip Rest".

2.1.1.4. Body contains "remove" or "spam" action equals make subject "Remove" then action equals redirect to chase101@domain.com then server option equals "delete" then action equals "Skip Rest".

2.1.1.5. Body contains "garbage" or "trash" action equals make subject "Remove" then action equals redirect to chase101@domain.com then server option equals "delete" then action equals "Skip Rest".

2.1.2. Undeliverables Deleted

2.1.2.1. Subject contains "deliver" or "error" then action equals server option "delete" then "Skip Rest"

2.1.2.2. Subject contains "unknown" or "bad" then action equals server option "delete" then "Skip Rest"

2.1.2.3. Subject contains "illegal" or "fail" then action equals server option "delete" then "Skip Rest"

2.1.3. Resume attached

2.1.3.1. Subject contains "resume" or "vitae" then action equals redirect to resume@domain.com

2.1.3.2. Body contains "resume" or "vitae" then action equals redirect to resume@domain.com

2.1.4. Forward to customer everything not deleted and matching their address

2.1.4.1. To contains XXX@abcd123.com then action equals redirect to user@theirdomain.com and server option equals delete and action equals "Skip Rest" Notice: every client requires one of these filters

2.1.5. Forward non filtered items to Quality Control Person—Theoretically nothing should be available to filter and forward to the Quality Control Function at this point unless there is a filter programming oversight.

2.1.5.1. To "appears" then redirect to qc@qcdomaine.com then server option equals delete and "Skip Rest"

Each Candidate Chaser machine is designated its own Master User Name at a Virtual Mail Server where a domain name specific to each machine is registered, for example "abcd123.com". ALL mail sent to any variation of XXX@abcd123.com, where XXX represents any designated client address assigned to that domain, is downloaded in one batch to the mail processing computer software program by accessing the assigned user name via the assigned POP3 channel. For example the user "SMR" may download all mail sent to the domain "abcd123.com" through the POP "mailhost.yourisp.net". In this case the ISP maintains the server on its domain called "mailhost.yourisp.net". Often the ISP will use the MUN domain as the POP3 channel so that it is possible to download the mail using a user name such as "SMR" through the POP3 channel "abcd123.com" or whatever other domain name is assigned by the ISP.

The ISP that provides the Virtual Mail Server is not necessarily the provider of dial-up access to the server. Therefore, one might dial-up the internet using one ISP such as Netcom to get onto the Internet Backbone and then access the Virtual Mailserver at a different ISP. The DNS settings in the dial-up program (usually entered in the TCP/IP settings of the dial-up) can be from one ISP while the POP3 settings can be from another.

CONCLUSION, RAMIFICATIONS, AND SCOPE

Accordingly, the reader will see that the Candidate Chaser Machine and Process automatically locates Internet site pages and web postings which contain operator specified keywords or Boolean combinations and then extracts all email addresses from those pages as well as linked pages to as many linking levels as selected by the operator and then sends a job opportunity description enclosed in an electronic mail message to each of the extracted addresses then receives responses from recipients of the job opportunity message then filters those messages by reading their text and forwards only desirable responses to the candidate seeking client's electronic mail address thusly sparing the client interaction with large amounts of irrelevant response while presenting viable candidates for a given job opening.

The Candidate Chaser process does not use a static database as its source of addresses but instead takes advantage of the dynamic properties of the Internet where new information is added every minute.

Job opportunity announcements are communicated to potential candidates within hours of submission.

Candidate Chaser job opportunity advertisements are delivered directly to the worker's email box therefore she/he is not required to search for applicable job offerings.

Workers view the Candidate Chaser job opportunity advertisement by choice at their convenience any time night or day since the advertisement arrives and resides in the email message box until they take an action or their software automatically discards it based on their previously set filters.

Job opportunity advertisements broadcast by Candidate Chaser stimulate workers to consider new career opportunities even when they are not actively seeking new employment thusly expanding the universe of candidates beyond those available to the employer through passive advertising methodologies.

Specific job opportunity ads are only broadcast to specifically applicable individuals who made their email addresses available on their resumes, on web pages indicating subject matter related to the job opening or on new group postings where subjects related to the job opening were specifically discussed.

Individuals adverse to receiving additional job opportunity advertisements easily eliminate their addresses from any potential future mailings by typing "remove" into the message subject heading and executing their mail programs "reply" command.

The customized harvesting of email addresses focused on the specific needs of each job opportunity advertisement individually results in relatively low quantities of advertisements broadcast and therefore, much less broadcast bandwidth is wasted due to non-applicable recipients.

The Candidate Chaser process costs less per hire to operate than many other recruitment methods.

Responses to electronically mailed advertisements are automatically processed through software filters presenting job opportunity advertisers with responses from interested candidates only.

The scope of this invention is limited to operating the combination of types of computer hardware, types of tele-

comunication hardware, and types of computer software programs and their operation in a specified manner as described herein consistent with achieving the objectives of the process set forth herein. Although the description above contains many specificities, these should not be construed as limiting the scope of invention but as merely providing illustrations of the presently preferred embodiments of this invention. For example, the search for web sites containing operator specified keywords may be executed using computer software programs not yet designed, created or available instead of the computer software program listed in the description.

Thus the scope of the invention should be determined by the appended claims and their legal equivalents, rather than by the examples given.

I claim:

1. A computer-implemented method comprising—performing the following steps in the following sequence:

a. searching the Internet

b. locating an Internet page or web posting,

c. reading at least a part of the text of said Internet page or web posting

d. comparing said text against at least one user defined criteria for an individual with specifically defined professional qualifications,

e. sorting said Internet page or web posting according to the presence or absence of said user defined criteria and for Internet site pages or web postings meeting said user defined criteria, electronically extracting from said Internet site page or web posting an e-mail address, and

f. sending to said extracted e-mail address an electronic mail message.

2. The method of claim 1, wherein said reading comprises reading substantially all of said text.

3. The method of claim 1, wherein said comparing step is performed by comparing said text to an operator specified keyword or Boolean combination.

4. The method of claim 1, wherein said comparing step is performed using a rules based technology (such as natural language screening).

5. The method of claim 1, wherein said user defined criteria for an individual with specifically defined professional qualifications, comprises at least one rule to identify whether said text comprises a resume for a potentially appropriate candidate.

6. The method of claim 1, wherein said user defined criteria for an individual with specifically defined professional qualifications, comprise previous candidate search results.

7. The method of claim 1, wherein said sorting comprises calculating a "score" for said Internet page or web posting and ranking said Internet page or web posting by said score.

8. The method of claim 1, wherein said user defined criteria for an individual with specifically defined professional qualifications, comprises at least one rule to identify whether said text comprises a resume for a potentially appropriate candidate; and wherein said sorting comprises calculating a "score" for said Internet page or web posting and ranking said Internet page or web posting by said score.

9. The method of claim 1, wherein said sorting generates a score for said Internet page or web posting, said score enabling said Internet page or web posting to be ranked by score; and wherein said sending is done only if said score satisfies a threshold value.

10. The method of claim 1, wherein said electronic mail message comprises information on the potential availability of a job opportunity.

11. The method of claim 1, wherein said method is made available to a customer on a subscription basis for direct access by said customer over the Internet via a standard Web browser.

12. The method of claim 11, further comprising:

g. receiving at least one response to said electronic mail message.

13. The method of claim 12, further comprising:

h. analyzing said response according to at least one user defined relevancy criteria to identify whether said response is desirable.

14. The method of claim 13, further comprising:

i. forwarding said response to a client.

15. The method of claim 14, wherein said response is forwarded to said client only if said response meets said relevancy criteria.

* * * * *

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Stephen Michael REUNING
Serial No	:	08/984,650
Filed	:	03 Dec. 1997
Group Act Unit	:	2724
Examiner	:	Romain JEANTY
Title	:	Candidate Chaser

Commissioner of Patents and Trademarks
Washington, DC 20231

Sir:

RULE 1.131 DECLARATION

1. I am the inventor of record for the captioned patent application.

2. The prior are discloses many systems for collecting and distributing information on potential candidates actively seeking employment. Many qualified candidates, however, may not be actively seeking employment when a particular job opening occurs. Finding these potential candidates - who do not necessarily send their resume widely, if at all - was difficult to impossible.

3. I conceived of a system for searching for potential employment candidates. I conceived of a system including each of the elements of my currently-pending claims. I did this not later than September 10, 1996.

4. I began to reduce my conception to practice not later than September 10, 1996. On September 10, 1996, I purchased a subscription to Netcom (TM) internet service. Netcom is an Internet Service Provider. I purchased Netcom (TM) service expressly to reduce my conception to practice. I purchased Netcom (TM) internet service because it presented advantages my pre-existing internet service provider did not, for reducing my conception to practice. To evidence this purchase of Netcom (TM) internet service, I attach as an exhibit, a redacted copy of my September 14, 1996 American Express bill. The bill shows the purchase posted September 10, 1996.

5. On October 2, 1996, I discussed my conception with some business advisors at a confidential meeting. This meeting was at the Endicott House (Dedham, Massachusetts). To evidence this meeting, I enclose a redacted copy of my November 14, 1996 American Express statement. That statement shows my telephone charges while at the Endicott House.

6. At the October 2, 1996 meeting, I was advised that my idea was potentially patent able. Thus I searched for information on how to write a patent application. I

eventually learned of, and purchased a copy of, Pressman, David, Patent It Yourself (Nolo Press). I do not have a copy of the receipt showing my purchase of this book.

7. After learning how to write a patent application, I began to write a patent application for my invention. I completed a draft not later that November 3, 1997. On that date, I asked my niece, Melissa Rudelt, to witness my completed draft application. She did so. To evidence this; I attach a copy of the first page of this draft application showing in the upper right corner, my niece's signature and date. I mailed my patent application to the Patent Office, the end of November.

8. By July 1997, I had succeeded in reducing my system to practice and establishing that it works, on Apple Macintosh (TM) operating systems and computers. I announced this in the July 1997 edition of my internal company newsletter. That newsletter states, at pg. 3, Col. 1, "We can mail to five hundred targeted e-mail recipients per hour." I attach a copy of the newsletter as an exhibit.

9. Unfortunately, around this same time, Apple Computer Corp. began experiencing significant troubles. These troubles are detailed in the same edition of the newsletter, at page 1. The newsletter notes, "Diedre Moire presently employs MacOS as its main personal computer operating system. Recent problems at Apple Computer relating to the

operating system development failures has reduced the number of software developers…. Therefore, we will begin an operating system migration immediately." Accordingly, I thus needed to test my system on Windows computers to see if it operates in the Windows environment. On September 8, 1997, I purchased computer hardware sufficient to assemble a fully scaled up, commercially operable version of the system using Windows (TM) operating system. This is evidence by environment my purchase order for ten Compaq PRESARIO (TM) Model 2120 desktop computers, two Compaq PRESARIO (TM) V-400 monitors, and two BELKIN (TM) four-part switches. I attach a copy of the purchase order as an exhibit.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United State Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon or any patent to which this verified statement is directed

Stephen Michael REUNING
July 14, 2000

Closing Date
September 14, 1996

tail Continued — Amount $

ugust 26, 1996 ERTIFIED TOURS INC FT LAUDERDALE FL OUR SERVICES eference: 0000009999999 Roc Number: 0000999999	3,093.00	SHR Ck ✓
ugust 27, 1996 IAC WAREHOUSE 800-925-6227 CT OMPUTERS/SFTWRE/HARWRE eference: 168654001 Roc Number: 0075992312	✓ 45.29	office Supply ✓
ugust 27, 1996 IAC WAREHOUSE 800-925-6227 CT OMPUTERS/SFTWRE/HARWRE eference: 167845700 Roc Number: 0075993080	✓ 532.95	off Supplies ✓
ugust 28, 1996 IAC PC & PHOTO ZONE 800-248-9948 WA OFTWARE/HARDWARE eference: 923176700 Roc Number: 9231767000	✓ 4,299.00	Mach + Equip ✓
ugust 28, 1996 IAC PC & PHOTO ZONE 800-248-9948 WA OFTWARE/HARDWARE eference: 934633700 Roc Number: 9346337000	✓ 9,109.90	Mach + Equip ✓
ugust 29, 1996 IAC WAREHOUSE 800-925-6227 CT OMPUTERS/SFTWRE/HARWRE eference: 171846100 Roc Number: 0076161689	✓ 34.75	office Supplies ✓
eptember 3, 1996 OUNG ENTREPRENEURS ARLINGTON VA IEMBERSHIP FEES/ACC eference: 024853958 703-527-4500	1,000.00	Dues ✓ Grants Review 10/2-6
eptember 4, 1996 IARPER COLLINS PBLSHSCRANTON PA UBLICATIONS eference: 022124896 Roc Number: 22124896	✓ 45.27	Education ✓
eptember 4, 1996 IAC WAREHOUSE 800-925-6227 CT OMPUTERS/SFTWRE/HARWRE eference: 177194600 Roc Number: 0077077186	241.34	do not pay returned ordered amt is credited to the AMEX Acct. shown next statement
eptember 5, 1996 IEWSWEEK MOUNTAIN LAKES NJ IAGAZINE/SUBSCRIPTIONS eference: 09355439	✓ 78.00	Subscriptions ✓
eptember 5, 1996 VOODBRIDGE HILTON ISELIN NJ INV#961098 ODGING/GIFTS/RESTAURANT eference: 000000961098 Roc Number: 0000961098	✓ 185.00	~~Lodging~~ ✓ Reimburse from YEO YEO
eptember 6, 1996 IEW DYNASTY SEAFD PALAC ROBBINSVILLE NJ OOD AND BEVERAGE IP $2.00 eference: 000273214	✓ 24.00	Computer Services ✓ OBrien
eptember 6, 1996 IAC WAREHOUSE 800-925-6227 CT OMPUTERS/SFTWRE/HARWRE eference: 181688200 Roc Number: 0076710252	✓ 77.15	off. Supplies ✓
eptember 10, 1996 RIMEHOST HOSTING 800-879-6882 VA OSTING SVC eference: 000000000 Roc Number: 0076928073	363.00	Web site Trade shows ✓
eptember 10, 1996 IETCOM ON-LINE COMM SAN JOSE CA NLINE SERVICES eference: 000379723 Roc Number: 0033100433	5.00	telephone ✓
eptember 12, 1996 IAC PC & PHOTO ZONE 800-248-9948 WA OFTWARE/HARDWARE eference: 945986600 Roc Number: 9459866000	✓ 212.94	Off. Supplies ✓

Continued on reverse

American Express Cards

American Express Travel Related Services Company, Inc.

Platinum Card® Statement of Account

Prepared For
STEPHEN M REUNING

Closing Date
November 14, 1996

Account Number
[redacted]

Previous Card Balance $	Card Payments/Credits $	New Card Charges $	New Card Balance $
4,295.48	-4,295.48	630.72	630.72

Statement includes payments and charges received by November 14, 1996.
* Indicates posting date.

VENDOR #
ACCOUNT #
PAID 572.87

Terms - Payable in full upon receipt of statement.

Your Platinum Card account renews next month. For additional information, please refer to the Charge Card and Statement Information section which can be found on page 3. Thank you for your continued Platinum Card membership.

If you have a question about your account, call 1-800-525-3355 (24 hours/7 days).

Join us in the Charge Against Hunger in Nov. & Dec. Help provide a meal for someone who is hungry. For more info. please refer to Cardmember Values or call (888)-8-TO-GIVE.

Please refer to page 3 for important information regarding your Card Account

VENDOR #
ACCOUNT #
PAID
CHECK #

Card Detail

Amount $

Card Payments

November 2, 1996* PAYMENT RECEIVED - THANK YOU	-2,679.06
November 2, 1996* PAYMENT RECEIVED - THANK YOU	-1,616.42
Total of Card Payments	**-4,295.48**

Card Transactions for STEPHEN M REUNING

Card 3713-828634-97007

October 6, 1996 ✓ 80.95
M I T ENDICOTT HOUSE DEDHAM MA
LODGING/GIFTS/RESTAURANT
Reference: 000000191469 Roc Number: 0000191469

Telephone Charge
Birthing of Giants

October 21, 1996 110.36
GOVERNOR MORRIS HOTEMORRISTOWN NJ

Arrival Date	Departure Date	No of Nights
10/20/96	10/21/96	1

LODGING
Reference: 029705110

Lodging

Continued on reverse

Please fold on the perforation below, detach and return with your payment

PURCHASE ORDER

TO PC Mall — SHIP TO DMC

ADDRESS 2645 Maricopa St. — ADDRESS

CITY Torrt, CA 90503-5144 — CITY

REQ. NO.	FOR	DATE REQUIRED	TERMS	HOW SHIP	DATE
					9/8

	QUANTITY ORDERED	QUANTITY RECEIVED	PLEASE SUPPLY ITEMS LISTED BELOW	PRICE		UN
1	10		94165-Precario 2120	$685	00	68
2			Desktop Computer-150			
3			mz/24 ram/2Gb.HD/24			
4			8X CDRW			
5						
6	2		V-400 Black Precario	218	00	436
7			Monitor			
8						
9	2		Belkin 4 port Switches	293	00	586
10						
11			S/h			373
12			Tax			
13						
14				7932	35	
15			Pd Amex			
16						
17			Cancelled			
18			cab 9862			
19			Omniview			
20			4 Port PS/2			
21			Belkin			
22						

IMPORTANT

OUR ORDER NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES, ETC.

PLEASE NOTIFY US IMMEDIATELY IF YOU ARE UNABLE TO SHIP COMPLETE ORDER BY DATE SPECIFIED.

PLEASE SEND ____ COPIES OF YOUR INVOICE WITH ORIGINAL BILL OF LADI

PURCHASING AGE

TOPS FORM 46146 ®

ORIGINAL

The Diedre Moire Newsletter

Keeping our employees, customers and investors informed — July, 1997

Special Report:

Automation R & D

Stephen Reuning dedicates every Monday to Research and Development. Instead of reporting to our corporate headquarters in Robbinsville, he begins his day on the internet working from his study at home or travels to computer industry vendors and consultants. With several goals to reach in a very short period oftime, he's discovered Mondays aren't enough and spends several nights a week and some weekends on Diedre Moire's Computer Automation Research Project (CARP). Following is a report submitted by Mr. Reuning discussing recent CARP developments.

REPORT: CARP 7/7/97

The purpose of our research is to ascertain what recent worldwide hardware and software product developments could support our corporate strategic goals while: improving our employees' quality of life, increasing productivity, improving products and services, and lowering costs. Several very specific areas of computer related products are being investigated., they include: personal computer operating systems; fax broadcasting software; database download and distribution software; browser software; electronic mail and news software, off-line browsing software; specialty WWW and Newsgroup multiple spider automated search and URL locating software; independent website download software; e-mail address file and folder dredging software; targeted bulk email and multiple newsgroup broadcasting systems; network software and hardware; data conferencing; personal portable computers and network and communications systems.

Personal computer operating systems

Diedre Moire presently employs MacOS as its main personal computer operating system. Recent problems at Apple Computer relating to operating system development failures has reduced the number of software developers committed to improvement and creation of application software for the Mac. While, as a user interface, Mac is a superior to Windows, our use of the system for corporate applications must consider several other factors: Ability to hire individuals already familiar with the operating system, diversity and quantity of vendors supporting the operating system, application providers' commitment to upgrade for the operating system, future update plans for the operating system (Apple's are sketchy), application software availability, cost competitiveness, maintenance availability.

In my opinion, our research indicates that Windows 98 will beat MacOS in many if not all the previously listed areas. Microsoft, the purveyor of Windows, is also setting the standard for many office, network, communications and internet applications. Only a small portion of those products are available to MacOS. Therefore we will begin an operating system migration immediately.

Fax broadcasting software

Fax documents are cheaper and faster to deliver than postal mail. Their delivery is more reliable and typically they are read. We are already employing a fax marketing program but the software in use has a very specific draw back, it will only merge up to 127 cover letter per batch. I have purchased and reviewed several other fax packages but they are not adequate.

Scott Shanes was absolutely amazed at the quick response to his first automated prospecting attempt on the WEB. A securement for Imclone Corporation on his first try! It was also Diedre Moire's first success of the Newsgroup Posts!!

Database download and distribution software

The Diedre Moire Resume Database is expanding as well as the rate in which data is being accumulated. We plan to expand the capacity of the system so we can increase the number of Information Coordinators inputting data. Furthermore we anticipate increasing modem capacity on the next UNIX computer upgrade so consultants can login from home. Our database tool developer, Bond ADAPT, has developed a Windows interface that will allow users to download files from the Diedre Moire Resume Database into their individual personal computers where they can use a What You See Is What You Get word processor to update and fax. I'm sure this is an exciting proposition to those who've attempted to use the UNIX version of WordPerfect! Furthermore, a resume image database will be maintained on line and available to users' personal computers using Bond's Windows interface. The system can also download field specific reports such as labeling in to be used on personal computer based applications such as mailmerge.

Browser software; electronic mail and news software

America Online may be the content king but their attitude towards customers sucks, in my opinion and lots of others based on what I've read recently. Scott Shanes had his newsposting ability canceled by AOL for two mistaken posts. Well, I'm selling my AOL stock and we are dumping AOL browsers.

I researched the new Netscape Communicator and Netscape Messenger and Netscape Collabra. Wow! These are great. The close runner up is Microsoft's Internet Explorer. Even though it seems a little more advanced and versatile now, we are not making Netscape our standard communications package. Instead I've chosen Microsoft Internet Explorer. It's already captured 40% of the browser market, a beta version of Internet Explorer 4.0 appears to have Communicator 4.0 beat for speed and versatility and Microsoft is integrating a great set of web development and communication tools such as Front Page, Personal Webserver, Net Meeting which will provide us with some powerful capabilities in a easy to use standardized format. Besides, if Bill Gates is going to take over the world we might as well join him.

Off-line browsing software

If you've sat in front of the computer waiting for pages to download, you'll be very excited about this one. Tell the software which URLs you want to review and it will download them all to a browser file. Then, later off-line you can read the pages at lightning speed. Several downloaded demos are testing as this is written. We'll have this available to you soon.

Specialty WWW and Newsgroup multiple spider automated search and URL locating software

I just purchased an application package that will search up to one hundred web search engines at a time while you are doing something else!!! Enter your query, enter the search engines (Yahoo, AltaVista, WebCrawler,etc.) you want searched and voile! it goes to work. The matching URLs are saved to a file. Follow up with independent website download software and you bring the data in from every URL so that you can browse it at your convenience OFF-LINE at lightning speed. PS: I can only find this software available for Windows. Another reason for changing our OS.

E-mail address file and folder dredging software

Upon using the previously mentioned WEB and Newsgroup searching systems, one could find herself with allot of data to sift through. Why not automate? The new "dredging" software purchased by Diedre Moire will read all those pages and extract the names and their associated e-mail addresses. The addresses are sorted in a database to be used by our new bulk e-mailing software.

Targeted bulk email and multiple newsgroup broadcasting systems.

We can mail to five hundred targeted e-mail recipients per hour. We can post help wanted messages to any of over 25,000 newsgroups instantly. It's like having a have dozen researchers prospecting for you.

Network software and hardware

Computers should make life and work easier, not harder. A mobile personal computer can provide you with instantaneous access to data stored on Diedre Moire's intranet which will include every computer on our network, instantaneous access to data stored on a world full of web sites and newsgroup postings, instantaneous access to clients, candidates and associates via e-mail, netmeetings and video conferencing. The upcoming Internet Explorer by Microsoft will provide access to the office network and the internet through the same easy to use browser interface. You'll communicate, fax, research, and view all through the same interface. We'll be installing on our local talk network at first and then upgrade to ethernet for speed. You'll be able to access all capabilities on the system from your computer.

Data Conferencing

New Internet applications allow Internet Explorer users to communicate with voice and video on-line while sharing a "whiteboard" on which they can draw diagrams or paste pictures, resumes etc.

Personal portable computers

Compaq computer company produces a line of laptops called the Presario series. It is self contained including, CD ROM, 3.5 Floppy, Windows, Modem, PCI slots, all ports. The line is reasonably priced and reliable. All Diedre Moire employees will be equipped with one once the entire

You'll be hearing more soon.

MAAPC Network Sharing begins

Diedre Moire is a member of an organization titled the Mid Atlantic Association of Personnel Consultants. It is an organization of approximately 160 separate employment agencies and recruiting firms. The association operates its own network broadcasting system however, it limits each firm to two candidates and two search assignments per week. Furthermore, their submission mechanisms are archaic and cumbersome. Therefore, Diedre Moire submits search assignments to MAAPC members via its own procedure.

Submissions to MAAPC members should be done on a weekly basis.

There are several components to the submission system they are

Diedre Moire Corporation's newest stockholder.

The fax broadcasting system mounted on a Macintosh computer

The document "template DMC.20.400.028.
MAAPC.address file kept in the folder DMC.10.735.002 (this is the folder where we keep all the fax address books).

The job descriptions can be dictated and then typed into the form (template DMC.20.400.028 or typed directly into the template).

Never save the template. Instead when starting a new submission open the template then execute the save as command from the file menu and save the new document in the DMC.20.400.028 folder with the label DMC.20.400.028 (MM/DD/YY) where (MM=the month and DD=the day and YY=year).

The listings can be prepared by consultants individually or one central person can control the input into the document. The most important factor is to maintain the discipline and consistency of the listings. The listings must indicate the geography, the compensation, the company type, the job description and job requirements as displayed in the template DMC.20.400.028.

Once the document has been completed and is ready for faxing save the original document in the DMC.20.400.028 Masters2 folder and then copy the document into the appropriate fax station computer.
Open the document on the fax station computer. Select global fax from the chooser. Conduct the page setup from the file menu for the document. Select fax from the file menu. When the fax dialog window opens select the MAAPC address book. Then instruct the fax broadcaster to send the faxes to each member.

DMC ADAPT DataBase Improvements

Magic Search and AdHoc Search wouldn't recognize periods, ampersands, hyphens and slashes (.&-/) prior to June 2, 1997. Now, the searches do recognize those characters when followed by an integer or letter. So the Search for "H.R" can now be queried. We don't want to index the period after every sentence in the data base so words that end with a period followed by a space won't include the period. For example, the characters "H.R. Mgr." will be indexed as two separate sets of words "H.R" and "Mgr" (note the "." missing from the end of "H.R.".

Some People really love thier work!!!

16 pages witness and understood by Melissa Rudelat on Nov 3, 1997

Melissa Rudelat

Nov 3, 1997

Patent Application of

Stephen M. Reuning

for

CANDIDATE CHASER VERSION ONE

Background - Field of Invention:

This invention relates to the process of recruiting new employees, specifically harvesting email addresses belonging to potential viable candidates from sites and postings searched for and found on the internet and sending specifically related help wanted advertisements via email to those addresses then receiving, filtering and distributing the response.

Background - Description of Prior Art

Classified help wanted advertising in print, ~~video~~ and ~~audio~~ media as well as postings of help wanted advertisements on internet web sites are a common practice. Such mediums for prospecting employment candidates are passive. They require the reaction of a potential job seeker who must be reading a specific periodical, watching or listening to a specific broadcast or visiting a specific internet web site or requested a specific push technology internet broadcast. The United States Federal Government predicts demand for technical labor in such areas as information technology, sciences, biotechnology and engineering to exceed supply by as much as fifteen percent by the year 2002. In such a situation competitive employers require more aggressive means to prospect employment candidate than the ~~latter~~ mentioned passive methodologies.

Bulk electronic mailing is a common process used to broadcast messages to groups of email addresses collected in databases however the processes used prior to Candidate Chaser are static and the targeting is dependent on pre-assembled databases of email addresses. In such cases where email address lists are procured from a database sources mailers are subject to limited accuracy on two catagories: first, are the addresses still active, second, are the individuals interested in receiving email related to the mailers' offerings. Furthermore, ~~present~~ the present state of email address databases to not permit the targeting of addresses based on the individual owners experience & interest.

While unquestionably legal, there is a powerful lobby opposing general broadcasts of large untargeted and unsolicited bulk electronic mailings which consume huge amounts of internet communication bandwidth causing system delays, increased cost without benefit and failures. Such mailings are broadcast to high quantities, 50,000 - 200,000 addresses at a time, in the hopes that a fraction, perhaps one tenth of a percent will reach a viable and interested audience. Most of the bandwidth consumption would not be necessary if a more targeted approach was used.

Employers ~~seeking to hire qualified candidates~~ spend over a billion dollars every year in the United States on employment agency fees, classified advertising costs, recruiting staff, the design of recruitment programs and software and referral bonus programs. Many of those employers are large companies that have invested tremendous development resources into solving their recruiting problems and cost reduction yet not a single one of them has created an automated recruiting system like the Candidate Chaser machine and process patented herein. The articles attached and labeled as Prior Art Documents # 1 through #25 indicate a recruiting industry searching for internet solutions to recruiting difficulties yet none suggest a solution similar to that presented by the Candidate Chaser machine and process supporting my position of unobviousness relating to the Candidate Chaser.

Most workers would like to be informed of employment opportunities with quality of life improving advantages including but not limited to compensation increases, advanced training, enhanced benefits, more challenge, diversity and improved career path provided notices of such opportunities were made at the workers' convenience and that workers are not overwhelmed with non-applicable job offerings. Employment agencies and headhunters serve such a purpose but they are prohibitively expensive. No automated and therefore cost effective alternative was available until the herein described Candidate Chaser was invented.

Present job opportunity advertising systems take days and weeks to reach potential candidates.

MR 11/3/97

~~While my research indicates no present use of bulk electronic mail for targeted help wanted advertising, if conducted the use of available bulk email systems would result in "bad address" responses from servers, remove responses, and revenge "flames" from anti-spammers burdening the advertisers incoming electronic mail system.~~ However, to present

A search of the IBM Patent Server at http://patent.womplex.ibm.com looking for the following words individually in the "abstract" field: recruit, recruiting, hire, hiring, job, candidate, classified, position, bulk, addresses, and recruitment turned up no relevant matching or related patents. A search on the same database for the phrase "electronic mail" turned up no apparently related patents except those patenting the process of sending and receiving electronic mail itself. The patent information and abstract which appear most closely related are attached and labeled as: Prior Art Document #26 Patent 5245532, Prior Art Document #27 Patent 5040141, Prior Art Document #28 Patent 5632018, Prior Art Document #29 Patent 5408334, Prior Art Document # 30 Patent 5487100, and Prior Art Document #31 Patent 5613108.

A search for articles and publications discussing "recruiting on the Internet" turned up two hundred forty nine separate documents. While discussing the use of electronic mail for the circulation of resumes and discussion of job possibilities, no reference is ever made to any recruiting solution that even remotely resembles the Candidate Chaser machine and process. I believe this supports the unobviousness of the Candidate Chaser machine as a solution to recruiting difficulties. Those article which best represent present art on the subject are attached and labeled as Prior Art Documents #32 through #40.

"recruiting on the Internet"

There are a good number of commercially available computer software programs which can perform certain functions of the Candidate Chaser machine. However, none of them alone or in ~~double or triple~~ combination accomplish the task of the Candidate Chaser machine ~~but can only contribute as part of the unique combination of hardware and software and procedural compnents that make up the Candidate Chaser machine and proecess~~. The said commercially available computer software programs are described in the attached Prior Art Documents #1 through #25.

obvious + process.

MP 11/3/07

Objects and Advantages

The Candidate Chaser machine automatically locates Internet site pages and web postings which contain operator specified keywords or Boolean combinations and then extracts all email addresses from those pages as well as linked pages to as many linking levels as selected by the operator and then sends a job opportunity description enclosed in an electronic mail message to each of the extracted addresses then recieves responses from recipients of the job opportunity message then filters those messages by reading their text and forwards only desirable responses to the candidate seeking client's electronic mail address thusly sparing the client interaction with large amounts of irrelevant response while presenting viable candidates for a given job opening.

CC operator then commands

The ~~candidate seeking hiring entity~~ inputs keywords ~~into one interface~~ causing the Candidate Chaser machine to interact with the infinite number of interface possibilities available on the Internet. The operator is not required to conduct or observe the cumbersome, tedious, frustrating and agonizingly slow task of reviewing data contained on Internet web sites, newsgroup postings and other data sources that may exist from time to time on the net. ~~The CC~~ Once started the CC conducts the internet search without operator intervention.

The Candidate Chaser process does not use a static database as its source of addresses but instead takes advantage of the dynamic properties of the Internet where new information is added every minute somewhere on the planet. Candidate Chaser does this by reading internet sites online and extracting email addresses as they appear on targeted sites, postings and broadcasts just prior to broadcasting a job opportunity advertisement

Job opportunity announcements are communicated to potential candidates within hours.

Candidate Chaser job opportunity advertisements are delivered directly to the worker's email box therefore she/he is not required to search for applicable job offerings.

MR 11/3/97

Workers view the Candidate Chaser job opportunity advertisement by choice at their convenience any time night or day since the advertisement arrives and resides in the email message box until they take an action or their software automatically discards it based on their previously set filters.

Job opportunity advertisements broadcast by Candidate Chaser stimulate workers to consider new career opportunities even when they are not actively seeking new employment thusly expanding the universe of candidates beyond those available to the employer through passive advertising methodologies.

Specific job opportunity ads are only broadcast to specifically applicable individuals who made their email addresses available on their resumes, on web pages indicating subject matter related to the job opening or on new group postings where subjects related to the job opening were specifically discussed.

Individuals adverse to receiving additional job opportunity advertisements easily eliminate their addresses from any potential future mailings by typing "remove" into the message subject heading and executing their mail programs "reply" command.

The customized harvesting of email addresses focused on the specific needs of each job opportunity advertisement individually results in relatively low quantities of advertisements broadcast. And much less broadcast bandwidth waste due to non-applicable recipients.

The Candidate Chaser process costs less per hire to operate than other recruitment methods.

Responses to electronically mailed advertisements are automatically processed through software filters: protecting job opportunity advertisers from "flames", logging removes into a universal database without ~~user~~ operator disturbance, and sorting qualified responses to the appropriate hiring authorities email box.

MR 11/3/97

Summary

The Candidate Chaser process uses a combination of publicly available and proprietary software computer programs and generally available computer hardware and computer peripherals to operate as a ~~single unit~~ means ~~which~~ to harvest email addresses of specifically targeted individuals based on their work experiences and interests, then broadcast a job opportunity advertisement to the recipients at the harvested addresses and then appropriatly sort and redirect consequential response as desired.

Description

The typical Candidate Chaser machine consists of one or more general purpose computers equipped with microprocessor, ram, hard disk drive, a communication interface that links the computer(s) to the Internet, one or more keyboards and mouse interface, one or more monitors, and software to be described later. If one monitor is used with multiple computers then a KVM keyboard mouse monitor switch box is employed so operator may switch monitor and keyboard interfaces between computers.

The general purpose computers are physically connected to a network router that can consist of simple analog modems connected to simple telephone lines or more complex digital routing methods but in all cases access to the Internet is necessary.

Installed commercially available "offline browsing" computer software enables the operator to instruct the machine to locate websites and postings, accessed via the internet, which contain operator specified keywords or Boolean combinations and then to download and store the address of the located matching websites and postings into memory. The address is in the format of the URL (Universal Resource Locator)or other address indicator protocols used on the Internet. The machine ~~will~~ immediately or at another time downloads the text from the files at the addresses which were located and stored in memory.

The keywords and Boolean combinations entered into the machine should be closely related to the experiences, interests, capabilities, professional titles or talents desired in applicable job candidates.

mn 11/1/11

The operator may instruct the machine to locate Hyper Text Markup Language Links, which are embedded addresses to other files on the Internet, on any of the website pages or postings turned up by the search. The operator may instruct the machine to follow the Links to their respective sites and locate more links at those sites. The operator may instruct the machine to follow the links as many level as desired. The number of link levels to search a dependent on the focus accuracy required of collection of addresses sought.

Once the text of a site or posting is downloaded into the machine's memory, the machine searches the text of the downloaded file for character strings representative of electronic mail addresses and saves those addresses in memory or disk storage. Presently, the electronic mailing protocol dictates that a filtering algorithm be used as follows: extract any string of characters that fits "space"_*@*.*_"space" where "*" is a wildcard variable representing any combination of characters.

If instructed to do so, the machine ~~will~~ continues to download and store site and posting addresses and download and store text into memory and extract addresses without continued operator action.

Collections of addresses may be stored in separate electronic storage files for repeated retrieval at later times.

Since the collected addresses are extracted from sites and postings containing the specified keywords or Boolean combinations, it is reasonable to predict that a consequential number of those addresses will belong to individuals with experiences, interests, capabilities, professional titles or talents related to those keywords or Boolean combinations.

Installed commercially available electronic mailing computer software enables the operator to instruct the machine to deliver a specific job opportunity advertising message to each address collected into a specific file. The operator types the copy into the machine keyboard interface and then instructs the machine to send the message to a specific collection of addresses at a specified time.

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Each message has a "From" field and a "Reply to:" field in addition to others. When electronic mail messages are received, recipients look to the "From" and "Reply to:" fields for instructions relating to sending response messages. The operator of the CC machine may insert any electronic mail address into the "From" and "Reply to:" fields as she/he may desire. The Candidate Chaser machine is designed to handle many mailings at one time and could be used to serve multiple candidate seeking hiring clients. In the case of multiple clients, the "From" and "Reply to:" fields could contain the electronic mail address of the client for each given job opportunity message. Thus, each client would receive response to their message directly.

There are reasons why the operator of the Candidate Chaser machine might want to filter responses before received by the client. First, a significant percentage of the response is error messages due to the fact electronic mail addresses are terminated often without forwarding instructions. Second, a percentage of responses are requests to be removed from future mailings. Third, a significant percentage of messages are "thanks but no thanks but keep me notified of other stuff" responses. Fourth, a percentage of responses are notifications that the recipient is forwarding the message to someone that might be more interested. Fifth, only a small percentage of responses are from candidates that are interested in applying for the job.

In order to filter responses before they are directed to the client's electronic mail address the following procedure is used: A domain name is registered with InterNIC and the IP address location of a virtual mail server is designated. The virtual mail server is programmed to deliver all mail to one user logon at a specified POP3 channel. A single "Virtual Mail Server" (VMS) can be maintained on an Internet Service Provider (ISP) host for each Candidate Chaser machine or established on a privat server. The VMS is designated by a domain name registered with Internic, for example "abcd123.com". Candidate Chaser clients are assigned Mail Accounts to the domain by the Candidate Chaser machine operator, for example 1001@abcd123.com. ~~The ISP provides~~ A Master User Name (MUN) for the domain on the VMS, for example smr@abcd123.com is programmed into the server. Electronic mail messages to potential candidates contain the client's assigned VMS mail account in the "reply" field so that responses are directed to the domain and recieved into the virtual mail server's storage.

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Consequently,

and the "To;" field in the response messages containing the client's mailing account address at the Candidate Chaser VMS domain. The electronic mail messages, directed to different clients based on the address in the "To:" field, is downloaded from the VMS in a single COMBINED batch using the mail computer software program to accessing the MUN account. The mail program then filters and redirects the electronic mail message based on the filters and filter actions listed in the paragraphs that follow.

Mail containing spam complaints or requesting removal from lists are directed to the Candidate Chaser machine's remove list creating computer software program, which presently is ExtractorPro Reply Man but can be any similar performing software package, so the addresses are automatically added to the Candidate Chaser machine's remove list and NOT forwarded to the client. Error messages indicating non-deliverable messages are deleted and NOT forwarded to clients.

Messages attached containing resumes and curriculum vitae are forwarded to a designated resume collection electronic mail address. Any messages that were not forwarded to the remove site or deleted for non-delivery are forwarded to the client's personal mail address at their mail server, for example: sally@aol.com. Mail that doesn't match any filter is forwarded to the quality control staffs' mail address so they can inspect it and determine whether filters need adjustment.

Filters are set up using the "Filters" command language of any commercially available filter capable mailing computer software program. The following filter program is designed for a Candidate Chaser machine using ten general purpose computers where the computers are referenced by a sequencial labeling system with the labels as follows: Chase101, Chase102, Chase103, Chase104, Chase105, Chase106, Chase107, Chase108, Chase109, Chase110, where the unit referenced as Chase101 receives messages containing electronic mail addresses designated for addition the remove list

1. Checking Mail option = leave mail on server (Mail will be removed from server by filter actions only.)
2. Every filter should be set up for "incoming" mail.
   2.1. Filters

2.1.1. Removes to Chase101

2.1.1.1. Subject contains "remove" or "spam" action equals make subject "Remove" then action equals redirect to chase101@~~ix.netcom.com~~ domain.com then server option equals "delete" then action equals "Skip Rest".

2.1.1.2. Subject contains "fuck"* or "shit" action equals make subject "Remove" then action equals redirect to chase101@ix.netcom.com then server option equals "delete" then action equals "Skip Rest". * Note! full disclosure

2.1.1.3. Subject contains "bastard" or "revenge" action equals make subject "Remove" then action equals redirect to chase101@ix.netcom.com then server option equals "delete" then action equals "Skip Rest".

2.1.1.4. Subject contains "unsubscribe" or "junk" action equals make subject "Remove" then action equals redirect to chase101@ix.netcom.com then server option equals "delete" then action equals "Skip Rest".

2.1.1.5. Subject contains "garbage" or "trash" action equals make subject "Remove" then action equals redirect to chase101@ix.netcom.com then server option equals "delete" then action equals "Skip Rest".

2.1.1.6. Body contains "remove" or "spam" action equals make subject "Remove" then action equals redirect to chase101@ix.netcom.com then server option equals "delete" then action equals "Skip Rest".

2.1.1.7. Body contains "fuck" or "shit" action equals make subject "Remove" then action equals redirect to chase101@ix.netcom.com then server option equals "delete" then action equals "Skip Rest".

2.1.1.8. Body contains "bastard" or "revenge" action equals make subject "Remove" then action equals redirect to chase101@ix.netcom.com then server option equals "delete" then action equals "Skip Rest".

2.1.1.9. Body contains "garbage" or "trash" action equals make subject "Remove" then action equals redirect to chase101@ix.netcom.com then server option equals "delete" then action equals "Skip Rest".

2.1.2. Undeliverables Deleted

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2.1.2.1. Subject contains "deliver" or "error" then action equals server option "delete" then "Skip Rest"

2.1.2.2. Subject contains "unknown" or "bad" then action equals server option "delete" then "Skip Rest"

2.1.2.3. Subject contains "illegal" or "fail" then action equals server option "delete" then "Skip Rest"

2.1.3. Resume attached

2.1.3.1. Subject contains "resume" or "vitae" then action equals redirect to reuning2@ix.netcom.com

2.1.3.2. Body contains "resume" or "vitae" then action equals redirect to reuning2@ix.netcom.com

2.1.4. Forward to customer everything not deleted and matching their address

2.1.4.1. To contains XXX@abcd123.com then action equals redirect to user@theirdomain.com and server option equals delete and action equals "Skip Rest"

Notice: every client requires one of these filters

2.1.5. Forward non filtered items to Quality Control Person - Theoretically nothing should be available to filter at this point

2.1.5.1. To "appears" then redirect to qc@qcdomaine.com then server option equals delete and "Skip Rest"

Each Candidate Chaser machine is designated its own Master User Name at a Virtual Mail Server where a domain name specific to ~~the tower~~ a machine is registered, for example "abcd123.com". ALL mail sent to any variation of XXX@abcd123.com , where XXX represents any designated client address assigned to that domain, ~~can~~ is be downloaded in one batch to ~~by~~ the mail processing computer software program by accessing the assigned user name via the assigned POP3 channel. For example the user "SMR" may download all mail sent to the domain "abcd123.com" through the POP "mailhost.yourisp.net". In this case the ISP maintains the server on its domain called "mailhost.yourisp.net". Often the ISP will use the MUN domain as the POP3 channel so that it is possible to download the mail using a user name such as "SMR" through the POP3 channel "abcd123.com" or whatever other domain name is assigned by the ISP.

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messages then redirect messages to desired mailboxes based on said analysis and sort.

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Abstract

The Candidate Chaser machine automatically locates Internet site pages and web postings which contain operator specified keywords or Boolean combinations and then extracts all email addresses from those pages as well as linked pages to as many linking levels as selected by the operator and then sends a job opportunity description enclosed in an electronic mail message to each of the extracted addresses then recieves responses from recipients of the job opportunity message then filters those messages by reading their text and forwards only desirable responses to the candidate seeking client's electronic mail address thusly sparing the client interaction with large amounts of irrelevant response while presenting viable candidates for a given job opening. It applies a distinctive and non-obvious method for delivering identical electronic mail messages to a group of targeted potential job candidates sharing a specifically desired single or set of common experiences, interests, capabilities, professional titles or talents relating to the needs of the candidate seeking hiring entity and handling their response.

MK 11/3/97

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: Stephen Michael REUNING
Serial No.	: 08/984,650
Filed	: 3 Dec 1997
Group Art	: 2724
Examiner	: Romain JEANTY
Title	: "Candidate Chaser"

Commissioner of Patents & Trademarks
Washington, DC 20231

Sir:

PRELIMINARY AMENDMENT

In response to the Office Action dated May 1, 2000, please amend the above-identified application as follows:

IN THE CLAIMS

Claims 5, 8, 9, 11 and 20. Delete the phrase "or the like."

Claims 4 and 19. In the preamble, after the word "comprising," add --performing the following steps in the following sequence--

Claims 4 and 15-18. Claim 4, page 2, line 5, after the word "criteria," delete [,] and insert --and-- and delete the carriage return. Line 6, delete [f.] . Line 8, delete [g.] and insert --f.--. Claim 15, page 4, line 6, delete [h.] and insert --g.--. Claim 16, page 4, line 9,

delete [i.] and insert --h.--. Claim 17, page 4, line 13, delete [j.] and insert --i.--.

Claim 14. Page 4, line 2, delete the word [client] and replace it with --customer--. Page 4, line 3, replace the word [client] with --customer--.

REMARKS

Claims 4-24 are pending. Claims 4-24 have been rejected under § 112 and § 103. Reconsideration and allowance of the claims as amended is requested. I first discuss the prior art, and then the pending rejections. I discuss the § 103 rejections first, and the § 112 rejections afterwards.

THE PRIOR ART

The prior art includes various data bases where job openings can be listed and where candidates can submit their resumes. This art includes non-computer art such as newspaper and radio help-wanted or help-available classified advertisements. The art also includes computer based things like internet-based job-opening bulletin boards or resume data bases. Examples include McGovern, US Patent 5,978,768, and the various "Other Publications" cited therein as prior art (*e.g.*, www.monsterboard.com, www.hotjobs.com, www.careermosaic.com, www.futurestep.com). The computer

based prior art, however, has functioned simply as electronic analogs of the non-computer art, broadcasting information on current job openings, and accepting resumes from candidates who are actively seeking employment.

For any job opening, however, many potentially excellent candidates may not be actively seeking employment when the job becomes available. Thus, these candidates will not necessarily get the information posted in the employment classified ads or the various internet job sites. Further, because these potentially excellent candidates may not be actively seeking employment, they may not circulate their resumes widely - if at all. Saliently, all of the prior art requires a potential candidate to search job openings (in the newspaper or the internet job sites, for example), write a resume, and then send the resume to a newspaper or internet site for storage in a data base and review. Potential candidates who do not do all of this, do not show up in the prior art resume data bases. Employers thus never get a chance to consider these candidates. This is unfortunate, because the very best candidates often are not currently seeking employment, and thus never get considered.

The claimed invention solves this problem. Rather than forcing a candidate to actively seek employment, the claimed invention can actually search for and find potential

candidates, even candidates *who are not actively seeking employment*, and do not even have a resume prepared at all. That's why Mr. Reuning calls his invention the "Candidate Chaser"; it chases good talent down, rather than waiting for good talent to find it. Thus, in contrast to the prior art, the claimed invention dispenses entirely with the requirement for a written resume, a data structure for uploading resumes, and the user interface required to make resume uploading easy. Unlike the prior art, the claimed invention can work without these structures at all.

We now turn to the pending rejections.

CLAIM REJECTIONS - 35 U.S.C. § 103

Claims 4-9 and 13-24 stand rejected under 35 U.S.C. § 103(a) as being obvious over McGovern et al. in view of Levine. Applicant respectfully traverses these rejections. McGovern discloses a data structure for storing resumes, while the claimed invention requires none. McGovern discloses searching this resume data structure to find potential candidates; in contrast, the applicant discloses a way of searching the Internet to find potential candidates, without using a data base of job openings or resumes at all.

Claims 4, 5, 13, 19 and 21

Claims 4, 5, 13, 19 and 21 stand rejected under 35 U.S.C. § 103(a) as being obvious over McGovern et al. in view of Levine because the Examiner believes that McGovern teaches each element of the applicant's claims except "sorting the Internet page." Reconsideration is requested, for three reasons. First, McGovern does not disclose the applicant's claimed sequence of performing these steps. Second, McGovern does not in fact disclose certain steps in applicant's claimed system. Third, McGovern and Levine should not be combined, as there is no suggestion in the art to combine them.

MCGOVERN DOES NOT DISCLOSE APPLICANT'S CLAIMED ORDERING OF THE STEPS

First, Applicant's claims (as amended) define a method. This method is performed in a certain sequence. This sequence allows the method to obtain an unexpected, synergistic and never-before achieved result.

An exception to this importance of sequence is in the two steps e. and f. of independent claim 4. It does not matter which of these two steps (e. and f.) precedes the other. Accordingly, applicant has amended claim 4 to combine these two steps into one step having two parts, each of which part may precede the other one.

McGovern, alone or combined with Levine, does not disclose applicant's claimed ordering of the steps. Thus, McGovern cannot anticipate the claimed method under § 103.

MCGOVERN DOES NOT
DISCLOSE EACH STEP
OF APPLICANT'S SYSTEM

Second, McGovern combined with Levine does not in fact disclose every step of applicant's system.

Applicant's independent claim 4 discloses a method comprising the step of "extracting from said Internet page or web posting an e-mail address." In contrast, McGovern does not disclose extracting an e-mail address; rather, McGovern discloses a system involving manually typing in (not automatically extracting) e-mail addresses. The text from McGovern cited as disclosing extraction does not in fact mention extraction. The text discloses, "enter[ing] in the spaces provided on the screen display 220 the Internet e-mail address of the person to which the resume is to be sent." McGovern at col. 17, lines 59-66. McGovern requires "entering" e-mail addresses, perhaps with the aid of an "address Book." See screen display 220. McGovern does not disclose extracting e-mail addresses.

Similarly, McGovern does not disclose a system involving getting an e-mail address - by extraction or otherwise - from an Internet page or web posting; McGovern's

e-mail addresses need to be individually sent to or input into the system.

Applicant's independent claim 4 discloses a method comprising "b. locating an Internet web page." In contrast, McGovern does not disclose a system involving locating an Internet web page; rather, McGovern discloses a system involving locating data in a data structure, which data structure is made accessible over the Internet. McGovern at col. 12, lines 46-52.

Applicant's independent claim 4 discloses a method comprising "c. reading at least a part of the text of said Internet page or web posting." In contrast, McGovern does not disclose a system involving reading at least a part of the text of said Internet page or web posting; rather, McGovern discloses a system involving uploading data to a data structure of submitted data ("if the remote site computer 44 determines that uploading . . . is permitted, the file uploading is completed"). McGovern at col. 14, lines 50-58.

Because McGovern does not disclose each of these steps, McGovern does not anticipate every element of the claimed method.

MCGOVERN AND LEVINE
CANNOT BE COMBINED

Third, McGovern and Levine cannot be combined. References may be combined for § 103 purposes only if the prior art contains a suggestion or a motivation to combine. E.g., In re Rouffet, 149 F.3d 1350 (Fed. Cir. 1998); Monarch Knitting Mach. Co. v. Sulzer Morat GmbH, 139 F.3d 877 (Fed. Cir. 1998). Here, a motivation to combine the cited references has not been disclosed in the prior art. See Office Action at 4 (1 May 2000).

The Other Claims

Claims 6 and 22 stand rejected under 35 U.S.C. § 103(a) as being obvious over McGovern et al. in view of Levine, because McGovern discloses using "an operator specified keyword or Boolean combination." As discussed above, McGovern does not disclose all the elements of the independent claims from which these claims depend. Therefore, McGovern cannot bar these dependent claims.

Claims 7-9, 20 and 23-24 stand rejected under 35 U.S.C. § 103(a) as being obvious over McGovern et al. in view of Levine, because McGovern discloses "software for screening resume." As discussed above, McGovern does not disclose all the elements of the independent claims from which these claims depend. Therefore, McGovern cannot bar these dependent claims.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being obvious over McGovern et al. in view of Levine, because McGovern discloses a web browser. As discussed above, McGovern does not disclose all the elements of the independent claims from which this claim depends. Therefore, McGovern cannot bar this dependent claim.

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being obvious over McGovern et al. in view of Levine, because McGovern discloses a "job search system" and because McGovern discloses a method for "posting and searching job-openings." As noted above, the applicant's system is not a "job search system," but a "candidate search system." As noted above, "posting and searching job openings" is not essential to the applicant's system.

Claim 16 stands rejected under 35 U.S.C. § 103(a) as being obvious over McGovern et al. in view of Levine, because "analyzing the [candidate's] response" is inherent in McGovern. As discussed above, McGovern does not disclose all the elements of the independent claims from which this claim depends. Therefore, McGovern cannot bar this dependent claim.

Claims 17-18 stand rejected under 35 U.S.C. § 103(a) as being obvious over McGovern et al. in view of Levine, because McGovern discloses (I) a "job search system"

and (II) "a method for posting and searching job openings" and (III) a system "which forwards responses (Col. 18, lines 11-22)." As noted above, the applicant's system is not a "job search system," but a "candidate search system." As noted above, the applicant's system does not "post and search job openings." It searches the internet, not job openings, and does not post job openings.

Claim 20 stands rejected under 35 U.S.C. § 103(a) as being obvious over McGovern et al. in view of Levine. As discussed above, McGovern does not disclose all the elements of the independent claims from which this claim depends. Therefore, McGovern cannot bar this dependent claim.

CLAIM REJECTIONS - 35 U.S.C. § 112

§ 112 ¶ 1 Rejections

Claims 7, 10-12 and 23 stand rejected under 35 U.S.C. §112, ¶1. These rejections are respectfully traversed, for two reasons. First, the independent claims from which these rejected claims depend, satisfy § 112. Section 112, ¶ 1 can be used to reject claims broader than those allowable under the written description of the initial disclosure. E.g., Gentry Gallery, Inc. v. Berkline Corp., 134 F.3d1961 (Fed. Cir. 1997); Regents of Univ. of Calif. V. Eli Lilly & Co., 119 F.3d 1559 (Fed. Cir. 1997). Section

112, however, cannot be used to reject claims narrower that those allowable under the written description of the initial disclosure. See id. Here, all claims rejected under § 112 are dependent claims, narrower than the independent claims already found allowable under § 112.

Second, any claimed matter not expressly mentioned in the specification was known to one of skill in the art as of the filing of the patent application. Claims 7 and 23 stand rejected under 35 U.S.C. §112, ¶1, as containing subject matter not described in the specification, as the term "natural language" is not expressly disclosed in the specification. This rejection is respectfully traversed, because since before the filing date of the application, the term "natural language" has been known in the art and has been described in numerous textbooks devoted to natural language processing. E.g., Rustin, R., Natural Language Processing (Algorithmics Publ., New York, NY 1973); Tennant, Harry R., Natural Language Processing (Petrocelli Books, NY 1981); Grosz, B.J. et al., Readings in Natural Language Processing (Morgan Kaufmann Publ., Los Altos, CA 1986); Perrault, R.C., "Natural Language Interfaces," in 1 Ann. Rev. Comp. Sci. 435 (1986); Gadzar, G. et al., Natural Language Processing in LISP (Addison Wesley Publ., Reading, MA 1989); Covington, M.G., Natural Language Processing for

Prolog Programmers (Prentice-Hall, Englewood Cliffs, NJ 1994). The meaning of the term "natural language" was yherefore widely known in the art when the application was filed. Thus, the term need not be expressly explained or disclosed in the specification. The Court of Appeals for the Federal Circuit recently held, "interpretation of what is disclosed must be made in light of the knowledge of one skilled in the art." Atmel Corp. v. Information Storage Devices, Inc., (slip op. 99-1082) (Fed. Cir., Dec. 28, 1999). In other words, § 112 is satisfied "if the patent applicant sets forth in the written description what one skilled in the art would need to know to make and use the claimed invention." See id. Because the term "natural language" was known in the art, it need not be expressly disclosed.

Claims 10-12 stand rejected under 35 U.S.C. § 112, ¶1 as containing subject matter not described in the specification, as the term "score and ranking" is not expressly disclosed in the specification. This rejection is respectfully traversed, because "scoring and ranking" has been known in the art since before the filing date of the application. Examiner has provided evidence of this, noting that "Levine discloses 'First class E-mail' which discloses the step of sorting and ranking e-mail messages." Office

Action at p. 4 (May 1, 2000). Because the meaning of "scoring and ranking" was widely known in the art when the application was filed, the term need not be expressly explained or disclosed in the specification. The Court of Appeals for the Federal Circuit recently held, "interpretation of what is disclosed must be made in light of the knowledge of one skilled in the art." Atmel Corp. v. Information Storage Devices, Inc., (slip op. 99-1082) (Fed. Cir., Dec. 28, 1999). In other words, § 112 is satisfied "if the patent applicant sets forth in the written description what one skilled in the art would need to know to make and use the claimed invention." See id. Because "scoring and ranking" was known in the art, it need not be expressly disclosed.

Claims 5-19 and 21-24 stand rejected under 35 U.S.C. § 112, ¶ 2 failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant believes the enclosed amendments to the claims make the claims particularly point out and distinctly claim the invention.

Claims 5, 8, 9, 11 and 20 stand rejected under 35 U.S.C. § 112, as the claim term "or the like" renders these claims indefinite. The claim term "or the like" is used and intended simply to encompass matter encompassed by the

claims automatically - as a matter of law - by the doctrine of equivalents. The phrase "or the like" may thus be deleted without changing the scope of the claims. Applicant thus amends the claims to delete this claim term.

Claim 14 stands rejected as the claim term "client" is unclear. Applicant accordingly amends the claim to substitute a claim term with a more clear meaning.

VALIDITY OF MCGOVERN REFERENCE

The Examiner notes that McGovern qualifies as a reference under 35 U.S.C. § 103 because it would qualify as a reference under 35 U.S.C. § 102(e). Applicant, however, conceived of the claimed invention before McGovern's May 8, 1997 filing date, and exercised diligence in reducing his conception to practice from before May 8, 1997 and continuously until applicant filed his patent application. Accordingly, enclosed is a Rule 131 Affidavit to swear behind McGovern.

Applicant believes, however, that that Affidavit is unnecessary, as the explanations given above fully distinguish McGovern from applicant's claimed invention. Accordingly, if the Examiner concludes that reliance on the Rule 131 Affidavit is necessary to allow the claims,

applicant respectfully requests that the Examiner expressly explain why, in the next Action.

Applicant notes that the Action dated May 1, 2000 appears to be misdated. The Action bears hand-written notations (apparently from a supervisory Examiner) initialed and dated "5-22-00." Further, the envelope for the Action was postmarked June 5, 2000. It thus appears the Action was mailed on or about June 5. Applicant thus respectfully requests that this paper be considered as filed within two months of the mailing date of that Action.

Applicant believes the amendments place the claims in condition for allowance. Applicant thus respectfully requests prompt allowance of the claims as amended.

CONCLUSION

Based on the above amendments and remarks, reconsideration and allowance of the application is believed warranted.

Respectfully submitted,

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PETITION ROUTING SLIP

(Find the petition from the list and check the box in the heading above the petition)

Complete if Known	
Application Number	08/984,650
Filing Date	03 Dec 1997
First Named Inventor	Rawing
Group Art Unit	2724
Examiner Name	Jeanty
Attorney Docket Number	Dierdre /Candidate Chase

☒ PETITIONS DECIDED BY PETITIONS OFFICE

301 Relating to Public Use Proceedings (37 CFR 1.292)
302 To make application special - prospective manufacture (37 CFR 1.102, MPEP 708.02)
(303) To make special - infringement (37 CFR 1.102, MPEP 708.02)
304 Relating to the Filing/Issuance of Divisional Reissue (37 CFR 1.177)
305 To waive or suspend rules (37 CFR 1.183)
306 To expunge a paper from patent application or patent file (37 CFR 1.59)
307 Withdrawal of Attorney (37 CFR 1.36)
308 For access to application except re proceedings before Board (37 CFR 1.14, MPEP 103,104)
309 Relating to Small Entity (37 CFR 1.28)
310 Relating to reexamination (37 CFR 1.181-1.183)
311 For correction of inventorship for applications - no filing date (37 CFR 1.48)
312 For correction of inventorship re PCT applications (37 CFR 1.48)
313 For filing application without one or more inventors (37 CFR 1.47)
314 For filing PCT application without one or more inventors (37 CFR 1.47)
315 For extension of time without fee in cases in Application Division (37 CFR 1.136(b))
399 For matters before A/C for Patents - not specified
408 Relating to a filing date under 35 USC 111& 37 CFR 1.53
411 Filing date for application filed by Express Mail (37 CFR 1.10)
412 Filing date for lost application
501 To revive an abandoned application - unavoidable delay (37 CFR 1.137(a))
502 To revive an abandoned application - unintentional abandonment (37 CFR 1.137(b))
503 To waive/suspend rules (37 CFR 1.183)
504 To invoke supervisory authority - re patent examining operations (37 CFR 1.181)
505 To withdraw from issue after payment of issue fee (37 CFR 1.313(b)(1-4))
506 To withdraw from issue after payment of issue fee (37 CFR 1.313(b)) or abandon application in favor of continuing application
507 To enter priority papers after Issue Fee payment (37 CFR 1.55(a))
508 To defer issuance of patent (37 CFR 1.314)
515 To invoke supervisory authority - re Office of Admin. (37 CFR 1.181)
516 To waive/suspend rules re patent matters in Office of Admin. (37 CFR 1.183)
519 To decide matters before Deputy A/C for Patents under 37 CFR 1.182
521 To review refusal to accept & record maintenance fee - application filed on or after 8/27/82 (37 CFR 1.377)
523 To issue patent in the name of the Assignee (37 CFR 1.334(c))
525 To withdraw a holding of abandonment (37 CFR 1.181)
526 To order a Commissioner-initiated Reexamination proceeding (37 CFR 1.520)
527 To convert Provisional Application
528 To reinstate abandoned Provisional Application
530 PCT petition-unavoidable
531 PCT petition-unintentional
532 To accept unavoidably delayed payment of maintenance fee (37 CFR 1.378 (b))
533 To accept unintentionally delayed payment of maintenance fee (37 CFR 1.378 (c))
534 Petitions related to reexamination proceedings
599 For matters before the Deputy A/C for Patents - not specified

☐ PETITIONS DECIDED BY THE GROUP DIRECTOR

601 To make application special on ground of age or health (37 CFR 1.102, MPEP 708.02)
602 To make special - continuity of earlier application (37 CFR 1.102, MPEP 708.02)
603 To make special - environment quality program (37 CFR 1.102, MPEP 708.02)
604 To make special - accelerated examination (37 CFR 1.102, MPEP 708.02)
605 To make special - Energy Program (37 CFR 1.102, MPEP 708.02)
606 To make special - Recombinant DNA (37 CFR 1.102, MPEP 708.02)
607 To make special for reasons not provided for in codes 601-606 (37 CFR 1.102, MPEP 708.02)
608 To reopen prosecution after Board decision (37 CFR 1.198)
609 For review of final restriction requirement (37 CFR 1.144)
610 Invoking Authority of Commissioner under 37 CFR 1.181 not specified in codes
611 Relating to the prematureness of final rejection (37 CFR 1.181, MPEP 706.07(c))
612 Relating to the refusal to enter an amendment (37 CFR 1.181 & 1.127, MPEP 714.19)
613 To withdraw a holding of abandonment (37 CFR 1.137, MPEP 711.03)
614 Relating to a requirement to cancel new matter from application (37 CFR 1.181, MPEP 608.04(c))
615 Relating to formal sufficiency/propriety of affidavits (37 CFR 1.131, 1.132, 1.608,MPEP 715.07)
616 To institute an interference (37 CFR 1.606)
617 Relating to refusal to enter an amendment under 37 CFR 1.312
618 For concurrent Ex parte and Inter parte proceedings (37 CFR 1.212)
619 For return of original oath of patent application (MPEP 604.04(a))
620 For extension of time (37 CFR 1.136(b))
621 For interview after Notice of Allowance mailed (MPEP 713.10)
622 Concerning appeal application before transfer of jurisdiction to Board (MPEP 1206)
623 For second or subsequent suspension of action (37 CFR 1.103, MPEP 709)
625 To reinstate Appeals dismissed in Group
626 From denial of reexamination request (37 CFR 515(c))
627 To enter an amendment after payment of Issue Fee (37 CFR 1.312(b))
628 From refusal to issue a Certificate of Correction (37 CFR 1.181, MPEP 1480 -1485)
629 For withdrawal of attorney from application pending in group (37 CFR 1.36)
630 For extension of time in a reexamination (37 CFR 1.550(c))
631 To merge multiple reexamination proceedings (37 CFR 1.565(c), MPEP 2283)
632 To effect a second conversion of inventorship (37 CFR 1.48, MPEP 201.03)
633 Superconductivity
634 To correct inventorship in a patent [illegible] in interference (37 CFR 1.324, MPEP 1481)
635 To change inventorship in an application (37 CFR 1.48)
636 To change inventorship in a patent (37 CFR 1.48)
637 To withdraw from issue before payment of an issue fee (37 CFR 1.313(a))
699 For matters before Group Director - not specified

☐ PETITIONS DECIDED BY BOARD OF PATENT APPEALS AND INTERFERENCES

701 To exercise supervisory authority re action by examiner/examiner-in-chief (37 CFR 1.644)
702 To accept belatedly filed copies of interference settlement agreements (35 USC 135(c), 37 CFR 1.666(c))
703 For withdrawal of attorney in proceeding under 37 CFR 1.201 - 1.288 (37 CFR 1.36)
704 For access to a settlement agreement under 35 USC 135(c) (37 CFR 1.666(b))
705 For access to an application in proceedings before the Board (37 CFR 1.14(e))
706 From a refusal to issue a Certificate of Correction (37 CFR 1.322, 1.323)
707 To correct errors in inventorship (37 CFR 1.324)
708 For extension of time to file amendment under 37 CFR 1.196(b) (37 CFR 1.136)
709 To make an application before the Board special (37 CFR 1.102)
710 For extension of time to file supplemental Reply Brief (37 CFR 1.136)
711 To assign particular members to hearing or to request augmented panel (35 USC 7)
712 To decide miscellaneous questions in proceedings under 37 CFR 1.601-1.688
713 To accept priority papers in applications in interference (37 CFR 1.644)
714 To reinstate an Appeal
799 For matters before Chairman of Board - not specified
801 To make an application before the Board special (37 CFR 1.102)
802 To reinstate an Appeal
803 To extend time/suspend proceedings (37 CFR 1,196, 1.197, 1.304)
804 For extension of time to file supplemental Reply Brief (37 CFR 1.136)
805 To accept late request for an Oral Hearing (37 CFR 1.136)
899 For matters before the Clerk of the Board - not specified

☐ PETITIONS DECIDED BY SPECIAL LAWS (SECURITY AND GOVERNMENT INTEREST MATTERS)

901 Under 42 USC 2182
902 Under 42 USC 2457
903 Under 35 USC 184
904 Under 35 USC 267
905 To consider/review security or Government interest matters - not specified

☐ PETITIONS DECIDED BY THE SOLICITOR

951 Petitions for extension of time in court matters 35 USC 142, 145, 146
952 Petitions relating to ex parte questions in cases before the Court of Appeals for the Federal Circuit
953 Requests filed under the Freedom of Information Act
959 Not specified

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor	: Stephen Michael REUNING
Serial No.	: 08/984,650
Filed	: December 03, 1997
Title	: Candidate Chaser
Group Art Unit	: 2765
Examiner	: Romain JEANTY

Commissioner of Patents & Trademarks
Box Patent Application
Washington, DC 20231

Sir:

PETITION TO MAKE SPECIAL UNDER Rule 1.102(d)

Applicant respectfully requests that examination of this application be made special, because of suspected actual infringement of the claimed invention.

STATEMENT OF FACTS

I. THERE IS AN INFRINGING DEVICE OR PRODUCT ACTUALLY ON THE MARKET OR METHOD IN USE.

1. Since the record filing date of the application, the Inventor has disclosed his invention on the internet. This invention is disclosed at www.candidatechaser.com. This disclosure is publicly available.

2 On information and belief, Webhire, Inc. ("WebHire") is a Delaware corporation with principal executive offices at 91 Hartwell Avenue, Lexington Massachusetts 02421, and WebHire common stock is publicly

Please type a plus sign (+) inside this box → ☐

PTO/SB/69 (12-97)
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Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION ROUTING SLIP

(Find the petition from the list and check the box in the heading above the petition)

Complete if Known	
Application Number	08/984,650
Filing Date	03 Dec 1997
First Named Inventor	Rawling
Group Art Unit	2724
Examiner Name	Jeanty
Attorney Docket Number	Dierdra /Candidate Chase

☒ PETITIONS DECIDED BY PETITIONS OFFICE

301 Relating to Public Use Proceedings (37 CFR 1.292)
302 To make application special - prospective manufacture (37 CFR 1.102, MPEP 708.02)
(303) To make special - Infringement (37 CFR 1.102, MPEP 708.02)
304 Relating to the Filing/Issuance of Divisional Reissue (37 CFR 1.177)
305 To waive or suspend rules (37 CFR 1.183)
306 To expunge a paper from patent application or patent file (37 CFR 1.59)
307 Withdrawal of Attorney (37 CFR 1.36)
308 For access to application except re proceedings before Board (37 CFR 1.14, MPEP 103,104)
309 Relating to Small Entity (37 CFR 1.28)
310 Relating to reexamination (37 CFR 1.181-1.183)
311 For correction of inventorship for applications - no filing date (37 CFR 1.48)
312 For correction of inventorship re PCT applications (37 CFR 1.48)
313 For filing application without one or more inventors (37 CFR 1.47)
314 For filing PCT application without one or more inventors (37 CFR 1.47)
315 For extension of time without fee in cases in Application Division (37 CFR 1.136(b))
399 For matters before A/C for Patents - not specified
408 Relating to a filing date under 35 USC 111& 37 CFR 1.53
411 Filing date for application filed by Express Mail (37 CFR 1.10)
412 Filing date for lost application
501 To revive an abandoned application - unavoidable delay (37 CFR 1.137(a))
502 To revive an abandoned application - unintentional abandonment (37 CFR 1.137(b))
503 To waive/suspend rules (37 CFR 1.183)
504 To invoke supervisory authority - re patent examining operations (37 CFR 1.181)
505 To withdraw from issue after payment of issue fee (37 CFR 1.313(b)(1-4))
506 To withdraw from issue after payment of issue fee (37 CFR 1.313(b)) or abandon application in favor of continuing application
507 To enter priority papers after Issue Fee payment (37 CFR 1.55(a))
508 To defer issuance of patent (37 CFR 1.314)
515 To invoke supervisory authority - re Office of Admin. (37 CFR 1.181)
516 To waive/suspend rules re patent matters in Office of Admin. (37 CFR 1.183)
519 To decide matters before Deputy A/C for Patents under 37 CFR 1.182
521 To review refusal to accept & record maintenance fee - application filed on or after 8/27/82 (37 CFR 1.377)
523 To issue patent in the name of the Assignee (37 CFR 1.334(c))
525 To withdraw a holding of abandonment (37 CFR 1.181)
526 To order a Commissioner-initiated Reexamination proceeding (37 CFR 1.520)
527 To convert Provisional Application
528 To reinstate abandoned Provisional Application
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531 PCT petition-unintentional
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533 To accept unintentionally delayed payment of maintenance fee (37 CFR 1.378 (c))
534 Petitions related to reexamination proceedings
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☐ PETITIONS DECIDED BY THE GROUP DIRECTOR

601 To make application special on ground of age or health (37 CFR 1.102, MPEP 708.02)
602 To make special - continuity of earlier application (37 CFR 1.102. MPEP 708.02)
603 To make special - environment quality program (37 CFR 1.102, MPEP 708.02)
604 To make special - accelerated examination (37 CFR 1.102, MPEP 708.02)
605 To make special - Energy Program (37 CFR 1.102. MPEP 708.02)
606 To make special - Recombinant DNA (37 CFR 1.102. MPEP 708.02)
607 To make special for reasons not provided for in codes 601-606 (37 CFR 1.102, MPEP 708.02)
608 To reopen prosecution after Board decision (37 CFR 1.198)
609 For review of final restriction requirement (37 CFR 1.144)
610 Invoking Authority of Commissioner under 37 CFR 1.181 not specified in codes
611 Relating to the prematureness of final rejection (37 CFR 1.181, MPEP 706.07(c))
612 Relating to the refusal to enter an amendment (37 CFR 1.181 & 1.127, MPEP 714.19)
613 To withdraw a holding of abandonment (37 CFR 1.137, MPEP 711.03)
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901 Under 42 USC 2182
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor	: Stephen Michael REUNING
Serial No.	: 08/984,650
Filed	: December 03, 1997
Title	: Candidate Chaser
Group Art Unit	: 2765
Examiner	: Romain JEANTY

Commissioner of Patents & Trademarks
Box Patent Application
Washington, DC 20231

Sir:

PETITION TO MAKE SPECIAL UNDER Rule 1.102(d)

Applicant respectfully requests that examination of this application be made special, because of suspected actual infringement of the claimed invention.

STATEMENT OF FACTS

I. THERE IS AN INFRINGING DEVICE OR PRODUCT ACTUALLY ON THE MARKET OR METHOD IN USE.

1. Since the record filing date of the application, the Inventor has disclosed his invention on the internet. This invention is disclosed at www.candidatechaser.com. This disclosure is publicly available.

2 On information and belief, Webhire, Inc. ("WebHire") is a Delaware corporation with principal executive offices at 91 Hartwell Avenue, Lexington Massachusetts 02421, and WebHire common stock is publicly

traded on the NASDAQ National Market System under the ticker symbol "HIRE."

3. WebHire filed with the United States Securities and Exchange Commission an annual report Form 10-K, for the period ending September 30, 1999. See Exhibit A.

4. According to the WebHire Form 10-K, for fiscal year 1999, WebHire had revenue of $25,295,000. Id. at pg. 13. For fiscal year 1998, WebHire had revenue of $30,855,000. Id.

5. According to the WebHire Form 10-K, WebHire "designs, develops, markets, implements and supports Internet- and intranet-based recruiting solutions to automate candidate sourcing." Form 10-K, pg. 1. II. The "Webhire Agent" Product

6. On information and belief, WebHire practices a process called "Webhire Agent." Webhire Agent is described in both the WebHire Form 10-K, and on the WebHire internet site, webhire.com.

7. The Form 10-K notes, WebHire "delivers products which are marketed under the Webhire brand: Webhire Agent, an automated web search agent." Id. The Webhire Agent service is "innovative resume searching technology that automatically searches the entire Internet for resumes, matching them against customer specified criteria." Id. at

pg. 2.

8. The Form 10-K notes:

> WEBHIRE AGENT is an intelligent web agent that searches the entire Internet for resumes, evaluating and scoring found resumes against customer-defined skills requirements for a job opening. Webhire Agent returns a relevance ranked list of the best qualified resumes it discovered on the Internet. Optionally, Webhire Agent can initiate an e-mail correspondence with candidates who meet or exceed a user-specific scoring threshold.

Id. at pg. 4.

9. Webhire Agent is also described on the WebHire internet site. See Exhibit B.

10. That Internet site describes Webhire Agent as "Your intelligent recruiter - Agent automatically searches the Internet, finding the right candidates for you." Id. at http://webhire.com/ javascript_site/body_java.htm.

11. The site elaborates: "Put your candidate search on autopilot! Webhire Agent intelligently searches the Internet to locate and qualify the best candidates . . . proactively contacting each one!" Id. at http:// webhire.com/ foremployers/agent_what.htm.

12. The internet page provides detail on how the Webhire Agent method works:

> Webhire Agent handles the entire candidate search cycle:

- It searches thousands of Web sites, newsgroups, bulletin boards and subscription services to locate candidates that match specific job skills, experience and location criteria - rapidly, without your involvement.
- It uses advanced natural language screening technology to filter out non-relevant information, while uncovering the resumes other search tools miss.
- It automatically sends a personalized message to each candidate, urging them to visit your Web site or reply via e-mail - just like a human recruiter!

Id. at http://webhire.com/foremployers/agent_what.htm (emphasis added).

II. A RIGID COMPARISON OF THE ALLEGED INFRINGING METHOD WITH THE CLAIMS OF THE APPLICATION HAS BEEN MADE, AND SOME OF THE APPLICATION CLAIMS ARE UNQUESTIONABLY INFRINGED

13. I have made a rigid comparison of the Webhire Agent described in the Form 10-K and the internet site, with the claims of the application.

14. In my opinion, some of the claims are unquestionably infringed.

15. For example, application claim 20 claims:

> 20. A computer implemented method comprising:
> a. locating an Internet site page or web posting which contains operator specified text comprising specifically defined experiences, interests, capabilities, professional titles, talents or the like;
> b. extracting from said Internet site page or web posting an e-mail address, and
> c. sending an electronic mail message to said extracted address.

16. Webhire Agent incorporates each limitation of the claimed method. The claim recites "a computer implemented method." Webhire Agent is a method for finding new hiring candidates. Webhire Agent is a computer implemented mehtod - it works "rapidly, without your involvement." The claim requires "locating an Internet site page or web posting." Webhire Agent "searches thousands of Web sites, newsgroups, bulletin boards and subscription services," thereby locating an Internet site page or web posting. Webhire Agent thus is "a computer implemented method" for finding new hires, entailing "locating an Internet site page or web posting."

17. The claim covers finding pages that contain "operator specified text comprising specifically defined experiences, interests, capabilities, professional titles, talents or the like." The Webhire Agent method "locate[s] candidates that match specific job skills, experience and location criteria." Thus, Webhire Agent finds pages that contain specified experiences, interests, or the like.

18. The claim covers extracting an e-mail address and "sending an electronic mail message to said extracted address." The Webhire Agent method "*automatically* sends a personalized message to each candidate, urging them to visit your Web site or reply via e-mail." Thus, Webhire Agent

automatically extracts an e-mail address and sends an electronic mail message to that extracted address.

19. Because the Webhire Agent method includes each limitation of claim 20, Webhire Agent literally infringes claim 20.

20. Similarly, Webhire Agent literally infringes pending application claim 21.

21. Pending application Claim 21 covers:

> 21. The method of claim 20, wherein said electronic mail message comprises information relating to a job opportunity.

Here, Webhire Agent "locate[s] candidates that match specific job skills." Thus, Webhire Agent has this claim limitation. Thus, Webhire Agent literally inringes application claim 21.

III. THE INVENTOR HAS CAUSED TO BE MADE A CAREFUL AND THOROUGH SEARCH OF THE PRIOR ART AND HAS A GOOD KNOWLEDGE OF THE PERTINENT PRIOR ART.

22. On information and belief, the inventor has caused to be made a careful and thorough search of the prior art and has a good knowledge of the pertinent prior art.

23. As part of the originally filed application, the inventor enclosed copies of several dozen references. On information and belief, the inventor has worked in the field

of personnel recruiting for several years. On information and belief, the inventor has a good knowledge of his own and of his competitors' past and current products and methods.

24. As stated in the original patent application, the inventor does not know of any prior art disclosure of the claimed invention.

25. Webhire Agent does not pose a §102(b) on-sale bar to the claimed invention. Webhire Agent was "introduced in November 1999." Form 10-K at pg. 4. In contrast, the inventor disclosed his invention to the public before November 1999, on his candidatechaser.com web site. Further, the record filing date of the application is two years earlier - December 3, 1997. Thus, Webhire Agent is not valid as prior art against the application.

POINT TO BE REVIEWED

Whether the referenced application for letters patent can be made special under Rule 1.102.

ACTION REQUESTED

Applicant respectfully requests that prosecution of this application be made special per Rule 1.102.

ENCLOSURES

Exhibits A and B are attached.

A Fee Transmittal Form and the required petition fee is enclosed with this Petition.

The references deemed most closely related to the subject matter encompassed by the claims are already of record. They are therefore not enclosed.

Respectfully submitted,

Mark Pohl, Esq., Reg. No. 35,325
15 February 2000
55 Madison Avenue, 4th floor
Morristown, NJ 07960
☎ (973) 665-0275

mbc:mp

EXHIBIT A

5

WEBHIRE INC

Filing Type: 10-K
Description: Annual Report
Filing Date: Dec 29, 1999
Period End: Sep 30, 1999

Primary Exchange: NASDAQ - National Market System
Ticker: HIRE

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K

(MARK ONE)

/X/ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF

THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED: SEPTEMBER 30, 1999
OR

/ / TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM _____ TO _____

COMMISSION FILE NUMBER: 0-20738

WEBHIRE, INC.

(FORMERLY RESTRAC, INC.)

(Exact name of Registrant as specified in its charter)

DELAWARE (State or other jurisdiction of incorporation or organization)	04-2933871 (IRS Employer Identification No.)
91 HARTWELL AVENUE LEXINGTON, MA (Address of principal executive offices)	02421 (zip code)

(781) 869-5000

(Registrant's telephone number)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or such shorter period that the Registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes __ X __ No _____

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [ ]

The aggregate market value of the voting stock held by non-affiliates of the registrant, based upon the closing price of the Common Stock on December 13, 1999, as reported on NASDAQ National Market System was approximately $83,200,000. Shares of Common Stock held by each executive officer and director and by each person who owned 5% or more of the outstanding Common Stock as of such date have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

The number of shares of the registrant's $0.01 par value Common Stock outstanding on December 17, 1999, was 14,502,921.

Part III incorporates by reference from the definitive proxy statement for the registrant's fiscal 1999 annual meeting of stockholders to be filed with the Commission pursuant to Regulation 14A not later than 120 days after the end of

experiencing rapid growth, a shortage of skilled labor and an urgent need to complete staffing initiatives.

In June 1999, the Company entered into an alliance with Yahoo!, Inc. (see Note 3 of Notes to Consolidated Financial Statements). Through this alliance, the Company develops, markets, and supports three services which are co-branded with the Yahoo! name: Yahoo! Recruiter, a complete end-to-end Internet recruiting solution which is sold primarily to corporate recruiters, Yahoo! Careers Resume Shop, a free resume management application for job seekers, and Yahoo! Resumes, an online tool that corporate recruiters use to search the resumes contained in the Yahoo! Careers Resume Shop database. The Company's solutions are the exclusive means for corporations to gain access to the online candidates within the Yahoo! Careers Resume Shop. The Company shares revenues from these services with Yahoo!.

The Company also delivers products which are marketed under the Webhire brand: Webhire Agent, an automated web search agent; Webhire Enterprise, a complete, integrated recruiting suite designed to meet the needs of large organizations; Webhire JobPost, an automated solution for corporate job posting; and Webhire Job Canopy, a complete solution for career site management that is marketed to Internet media company and portal sites.

The Company delivers its Internet solutions to customers using a web services model, selling the services on a subscription basis, for direct access by subscribers over the Internet via a standard web browser. The Company's solution for large organizations, Webhire Enterprise, is sold through both the application service provider (ASP) model and also as traditionally licensed software.

The Company's principal offerings are Internet based online recruiting services. These services are implemented using standard industry protocols, such as TCP/IP, HTTP and XML. The service based approach provides our customers with a robust set of product features and a high performance end user experience without requiring them to install any software. Our service infrastructure is based on leading edge technologies from a number of vendors including Microsoft, Oracle and Sun. The infrastructure is designed for high performance, scaleability and high availability. The use of open standards in the design of our systems facilitates easy integration with applications operated by our partners and customers.

The Company was incorporated in 1982 as a Massachusetts corporation and was reincorporated as a Delaware corporation in 1994. As of June 1, 1999 the Company effected a name change to Webhire, Inc. Restrac Securities Corporation, a wholly-owned subsidiary of Webhire, Inc., was incorporated in September, 1996 as a Massachusetts securities corporation for the purpose of holding and managing certain of the Company's cash and investments.

In November 1998, the Company purchased the exclusive rights, within the online recruiting space, to technology originally developed by Junglee Corporation and owned, at that time, by Amazon.com (see Note 4 of Notes to Consolidated Financial Statements). The Company acquired technology and customers through this agreement. The Junglee technology has been integrated and enhanced and is the backbone of the Company's JobPost and Job Canopy services.

In May of 1999, the Company purchased Hireworks, Inc., a developer of innovative resume searching technology that automatically searches the entire Internet for resumes, matching them against customer specified criteria (see Note 4 of Notes to Consolidated Financial Statements). This technology has been enhanced and is today marketed as the Webhire Agent service.

INDUSTRY BACKGROUND

Recruiting has emerged as one of the most strategic corporate initiatives. U.S. employment, as reported by the U.S. Department of Labor, has reached historically high levels. In general, there is an unprecedented shortage of candidates available to fill an increasing number of jobs. In fact, today there is a "job gap"--according to some industry analysts there are over 2 million

jobs that remain open because there are no qualified candidates in the labor market to fill them. This is not a temporary phenomenon. U.S. Census data indicates that the population of 30-45 year olds, the primary labor pool for middle managers across U.S. corporations, peaked in 1997 and is actually declining in real terms. Today's candidate shortage represents the norm for the future labor market.

Traditional recruiting methods, print advertisements and professional recruiters (or "headhunters"), lose their effectiveness in a market where there is a shortage of candidates. During the past three years, the Internet has evolved into a sophisticated and ubiquitous communications infrastructure. The Internet has emerged as the critical medium for recruiting because it brings candidates and employers together in a directly connected marketplace. On the Internet, an employer has access to literally millions of resumes, they can post job openings at thousands of online job boards, and they can communicate with candidates in seconds.

Internet recruiting has become a central staffing strategy for today's corporation. How effectively a company utilizes the Internet for recruiting is rapidly becoming a synonym for how effectively a company recruits.

WEBHIRE INTERNET RECRUITING SOLUTIONS

The Company's Internet recruiting services enable organizations to recruit more efficiently in today's tight labor market. The Company's services enable corporations to reduce the time and effort required to source candidates on the Internet, provide tools that help corporate recruiters and hiring managers identify the best possible talent for open positions and enable the management of the entire staffing process online. Because the Company's primary solutions are provided to employers over the Internet, start-up times and extensive IT infrastructure requirements are eliminated.

DIRECT INTERNET SOURCING. The Company provides several services which enable corporate recruiters to directly source candidates from the Internet. The Company, as a result of the Yahoo!, Inc. business venture and its other partners, manages and maintains large pools of candidate resumes on the Internet. As of December 1999, there are approximately 250,000 resumes accessible for targeted searching through the Company's proprietary recruiting solutions. The Company, as a result of its HireWorks, Inc. acquisition,

also offers an automated intelligent search agent that conducts resume searching and ranking across the entire Internet. It is estimated that approximately 2 million resumes are accessible through the Company's agent technology.

INTEGRATED INTERNET JOB POSTING. There are now hundreds of career sites and thousands of use.net discussion groups in existence on the Web, each with its own specific job posting format and protocol. A successful corporate recruiting strategy includes job posting to use multiple destinations that reach national, regional and special interest audiences. The Company provides integrated job posting solutions that enable jobs to be posted to multiple job boards in one simple operation. As of December 1999, the Company is managing 300,000 job postings on behalf of its customers.

RESUME PROCESSING. The creation of a private online electronic database of resumes is central to the Company's candidate management solutions. The Company processes resumes, faxes, e-mail and direct web applications using the latest optical character recognition technologies. The Company processed approximately 2 million resume pages during 1999. The processed resumes are stored online in secure databases that are accessible only to the customer. The resulting electronic resume pool represents a knowledge asset that can be shared throughout an organization. Manual input is virtually eliminated, allowing organizations to collect and store skills and experience data on hundreds of thousands of candidates. The Company's services provide a shared, re-useable pool of candidates, limiting the need for organizations to use employment agencies and advertising to source candidates.

SOPHISTICATED SKILLS MANAGEMENT AND SELECTION. The Company's software uses

a sophisticated search process to rapidly identify and rank qualified candidates based on skills criteria determined by the user. User searches are enhanced by the Company's integrated skills library, which translates high-level job requirements into the words and synonyms commonly used by candidates on resumes.

CANDIDATE MANAGEMENT PROCESS. The Company's solutions incorporate a user-friendly, process-oriented graphical user interface (GUI) designed to simplify the administration of the candidate management process including job requisition creation and editing, candidate tracking, and integrated reporting on the hiring process and sourcing effectiveness. These capabilities reduce delays typical to the staffing process and eliminate redundancies.

By providing an easily-accessible, shared, re-useable pool of candidates, the Company's software allows organizations to significantly reduce recruitment advertising costs and employment agency fees. In addition, the Company's software is designed to increase recruiter productivity through the elimination of manual entry of resume information and by increasing the efficiency of the hiring process.

STRATEGY

The Company's objective is to extend its current market leader position in the Internet recruiting marketplace to become the standard solution for corporate Internet recruiting. The Company has developed a pyramid of subscription-based Internet recruiting services that offer many different entry points into the Company's solution set. As customers' Internet recruiting needs mature and grow, the Company provides additional service offerings that extend the features and capabilities of the solution. Taken individually, the Company's services meet the needs of virtually the entire corporate recruiting marketplace. Today, the Company's solutions are used by companies as small as 25-50 employees, are the recruiting standard at hundreds of Fortune 1000 companies and are being adopted regularly across the broad market of companies in the middle market. The Company estimates that there are approximately 250,000 corporations and 25 million hiring managers in its target audience.

The Company's solutions range in price from hundreds of dollars per month for entry-level Internet sourcing tools, to tens of thousands of dollars a month for complete enterprise recruiting solutions. At the top of the Company's solution pyramid, a customer has an option to purchase and install the Company's solution as a traditionally licensed software application. The Company believes that the solution pyramid

approach will yield larger subscription contracts through the placements of additional services at existing accounts.

PRODUCTS

The Company has developed a wide-ranging suite of service offerings that span many aspects of Internet recruiting. These offerings, which are sold primarily to small and mid-sized corporations, include Yahoo! Recruiter (introduced as Webhire Recruiter in November 1997, upgraded and renamed in September 1999), Yahoo! Resumes (introduced in December 1999), Webhire Agent (introduced in November 1999), and Webhire JobPost (introduced in November 1998). The Company also provides an infrastructure and site management service, Webhire JobCanopy, introduced in November 1998, to Internet media companies. Finally, the Company delivers Webhire Enterprise, released in June 1998 as a comprehensive recruiting automation suite designed specifically to meet the needs of large organizations.

YAHOO! RECRUITER, powered by Webhire, is a complete, end-to-end solution for Internet recruiting automation. Corporate recruiters use Yahoo! Recruiter to manage requisitions online, post jobs, search for candidates at Yahoo! Careers and within other Webhire-managed online candidate pools such as JWT Specialized Communications Resume Works, track hiring status and report on staffing activities. The service offering includes complete resume processing and management, enabling corporations to save money and resources by moving their entire recruiting process online.

YAHOO! RESUMES, powered by Webhire, provides customers with direct access to the candidate resumes at Yahoo! Careers. Using the service's sophisticated searching screens, customers can create skills based searches that are targeted geographically. The resulting ranked list of the best fitting resumes for a job puts talent in front of a recruiter or hiring manager in seconds, without the need for advertising campaigns and external recruiters.

WEBHIRE AGENT is an intelligent web agent that searches the entire Internet for resumes, evaluating and scoring found resumes against customer-defined skills requirements for a job opening. Webhire Agent returns a relevance ranked list of the best qualified resumes it discovered on the Internet. Optionally, Webhire Agent can initiate an e-mail correspondence with candidates who meet or exceed a user-specific scoring threshold.

WEBHIRE JOBPOST is an automated job publishing service that collects job listings from a customer's Web site and re-publishes those listings at career sites across the Internet. A customer subscribing to JobPost need only keep their careers pages up to date, the JobPost technology manages the movement of those jobs to the one or more job boards that the customer has designated. At any moment, the Company is managing approximately 300,000 active job postings using this technology.

WEBHIRE JOB CANOPY is a technology that Internet media companies use to outsource the management of their online job listings to the Company. Job Canopy provides career sites with integrated job listings, automated job posting for their customers, job searching tools for job-seekers who visit the media company career site and a direct job posting connection to the Company's customers who are using the Company's JobPost service.

WEBHIRE ENTERPRISE is a complete, integrated recruiting automation suite designed specifically for large organizations. The technology can be delivered to customers as an ASP service or as traditionally licensed software. Webhire Enterprise incorporates requisition management, resume processing, candidate ranking, staffing workflow automation, and customizable reporting features. Through the service's Manager's Workbench option, customers can connect hiring managers across their organization enabling hiring managers to directly initiate job requisitions, review resumes online, manage team interviews and initiate a job offer. New hire information contained in the Webhire Enterprise database is easily integrated with PeopleSoft and SAP Human Resource Information Solutions.

CUSTOMER SERVICES

The Company believes that superior customer service and support are critical to customer satisfaction. As of September 30, 1999, the Company's customer service organization included 60 employees, providing Professional Services, Technical Support and Outsourced Services.

PROFESSIONAL SERVICES. The Professional Services Group manages system implementation, provides additional services such as process design and system tailoring and provides basic and advanced training both online, on-site during system implementation and at the Company's Corporate Training Centers throughout the year.

TECHNICAL SUPPORT. The Technical Support Group provides daily assistance to customers with maintenance agreements through the Company's support help line. The Company provides support Monday through Friday from 8:30 a.m.-8:00 p.m. Eastern Time as well as 9:00 a.m.-6:00 p.m. Greenwich Time to support the Company's European customers.

OUTSOURCED SERVICES. Outsourced Services were introduced by the Company in July 1996 and consist of scanning services, provided principally through third-party arrangements, and correspondence generation.

TECHNOLOGY

YAHOO! RECRUITER

Yahoo! Recruiter, the Company's Internet-based service offering, is based on open, extensible Internet development tools. It makes wide use of standard technologies. This adherence to standard technologies ensures that Yahoo! Recruiter can be scaled as demand for the service increases. Client access to the Webhire system is provided through either Microsoft or Netscape World Wide Web browsers.

WEBHIRE ENTERPRISE

Webhire Enterprise is a Microsoft Windows-based application which operates over a standard TCP/IP intranet connection. The application server component of the product utilizes Microsoft Windows NT Server and Microsoft Internet Information Server. Client access is provided via both a Windows application and a browser interface which is compatible with Microsoft Windows 95/98 or Microsoft Windows NT. This architecture combines the functionality of a traditional client/server application with the easy deployability of an intranet application.

PRODUCT DEVELOPMENT

The Company believes that its future success will depend upon its ability to enhance its existing software and develop and introduce new products and functions which keep pace with rapid changes in the marketplace. The Company has made increasing investments in its engineering and quality groups to broaden its product and service offerings, enhance product functionality, improve performance and expand the ability of its software to inter-operate with third-party software. Research and development expenses totaled (in thousands) $7,798, $5,588 and $5,446 for fiscal years 1999, 1998, and 1997, respectively. While the Company expects that certain of its new products and functions will be developed internally, the Company may, based on timing and cost considerations, expand its product offerings through acquisitions or strategic relationships. Software products as complex as those currently under development by the Company are subject to frequent delays and there can be no assurance that the Company will not encounter difficulties that could delay or prevent the successful and timely development, introduction and marketing of these potential new products.

SALES AND MARKETING

The Company markets its Recruiter service through telesales representatives and sales personnel located in Lexington, Massachusetts, Foster City, California, and Chicago, Illinois. The average sales cycle for this service is substantially shorter than that experienced for the Company's enterprise products.

The Company markets its enterprise products and services through a direct sales force in North America. The Company supports its sales force through comprehensive marketing programs which include public relations, direct mail, advertising, seminars, trade shows, ongoing customer communication programs and strategic relationships. While the sales cycle varies from customer to customer, it typically spans four to nine months from generation of a lead from one of these sources to execution of a license agreement. The Company's direct sales force is structured regionally and is managed through sales and service offices in Lexington, Massachusetts and Foster City, California, and through sales personnel located in Dallas, Chicago, New York, Raleigh, and Toronto.

CUSTOMERS

The following is a partial listing of the Company's customers as of September 30, 1999:

FINANCIAL SERVICES	INSURANCE	E-COMMERCE
Aim Management Group	Trigon Blue Cross/Blue Shield	Akamai Technologies
American Express	John Hancock	Art Technology Group
Bank of America	Phoenix Home Life	CMGI

BankBoston
M&T Bank
Visa USA
The World Bank

PUBLISHING/ENTERTAINMENT
Blockbuster Entertainment
Gannett
The New York Times
Paramount Pictures
Random House

ENGINEERING/CONSULTING
CH2M Hill
Logica
Mason & Hanger

HEALTHCARE/PHARMACEUTICALS
Corp.
Abbott Laboratories
Bristol Myers Squibb
Johnson & Johnson
The Mayo Clinic
Memorial Sloan Kettering
PacifiCare
Pfizer
SmithKline Beecham
Genentech

Prudential

TECHNOLOGY/COMMUNICATIONS
Amdahl
The Boeing Company
EMC
Hewlett-Packard
Lockheed
Microsoft

CONSUMER
British Airways
Canadian Tire
Cargill
Levi Strauss
Nabisco
Staples
Starbucks

the good guys!

daly.commerce
Encoding.com
iCopyright.com
Inforonics
LifetecNet.com
living.com
Morningstar, Inc.
Oasis Technology
One to One Interactive
Open Market, Inc.
Open Text Corporation
PC Connection
Pets.com
Point.com, Inc.
SilknetSoftware.com
Silverstream
Value America
WebLine Communications

Yahoo! Inc.

STRATEGIC RELATIONSHIPS

The Company has established a number of relationships both to leverage marketing channels and complementary technologies and to meet customer demands for open, integrated, multi-vendor solutions. Strategic partners are categorized into four groups: Technology Partners, who provide the Company with innovative technologies that are integrated into the Company's products; Applications Partners, who provide the Company's customers with value-added software, consulting or other services that are complementary to the Company's software and services and that enable the Company's customers to better utilize the Company's software; Service and Implementation Partners, who extend the Company's support, implementation and service offerings by delivering the specialized services our customers need; and Internet/Information Partners, who provide the Company's customers with the ability to access and distribute crucial staffing information, including job postings, candidate information, and resumes, often via the Internet. Examples of the Company's strategic partners include:

YAHOO!, INC.

In June 1999, the Company entered into an alliance with Yahoo!, Inc. Through this alliance, the Company develops, markets, and supports three services which are co-branded with the Yahoo! name: Yahoo! Recruiter, a complete end-to-end Internet recruiting solution which is sold primarily to corporate recruiters, Yahoo! Careers Resume Shop, a free resume management service which is offered at Yahoo! Careers, and Yahoo! Resumes, an online tool that corporate recruiters use to search the resumes contained in the Yahoo! Careers Resume Shop database. The Company's solutions are the exclusive means for corporations to gain access to the online candidates within the Yahoo! Careers Resume Shop. The Company shares revenues from these services with Yahoo!.

VERITY, INC.

The Company's software incorporates the text search software tools developed by Verity, Inc., a Technology Partner, which allows Webhire clients to search through vast amounts of candidate and job data, delivering only the most relevant information directly to the desktop.

EXHIBIT B

5

Win the race for candidates with Internet recruiting, powered by Webhire.

Your company is growing and you need to fill jobs now. Who can help you find the candidates? Webhire can.

Webhire tools and services connect your company to the wealth of recruiting resources on the Internet. Make the same decision that over 1000 innovative hiring companies have – ranging from rapidly growing Internet companies like pets.com and Akamai to Fortune 500 companies including Boeing, BankAmerica, and American Express.

Earn $1,000 Today!

Powered by webhire

YAHOO! Resumes — Start your recruiting by searching the tens of thousands of resumes in the fast-growing Yahoo! Careers database of Internet-savvy job seekers.

YAHOO! Recruiter — Harness the power of Internet Recruiting! The complete Internet recruiting solution, hosted entirely on the Web.

---

webhire agent — Your intelligent on-line recruiter – Agent automatically searches the Internet, finding the right candidates for you.

---

webhire enterprise — Deployed through an Application Service Provider (ASP) or in-house on your corporate intranet, Webhire Enterprise brings you the leading automated recruitment solution.

Webhire Agent

Probe the Internet for candidates...automatically!

WHAT IT IS

HOW IT WORKS

Get More Info

Webhire Agent ▸ WHAT IT IS

Put your candidate search on autopilot! Webhire Agent intelligently searches the Internet to locate and qualify the best candidates . . . proactively contacting each one!

WHAT IT IS
HOW IT WORKS
CONTACT US

Webhire Agent is the closest thing to having a real, live recruiter out searching the Internet to fill your company's open positions. It lets you dramatically reduce the time and cost associated with finding qualified candidates . . .so you can spend your valuable time closing candidates and filling jobs!

Webhire Agent handles the entire candidate search cycle:

- It searches thousands of Web sites, newsgroups, bulletin boards, and subscription services to locate candidates that match specific job skills, experience and location criteria — rapidly, without your involvement.
- It uses advanced natural language screening technology to filter out non-relevant information, while uncovering the resumes other search tools miss.
- It automatically sends a personalized message to each candidate, urging them to visit your Web site or reply via e-mail — just like a human recruiter!

There are more than 22 million job seekers on the Internet — find them quickly, efficiently and automatically with Webhire Agent!

Webhire Agent ▸ HOW IT WORKS

Webhire Agent uses advanced search/screen technology to automate the entire process of finding qualified candidates on the Internet.

WHAT IT IS
HOW IT WORKS
CONTACT US

It's Intelligent
Webhire Agent is smarter than search engines and other online recruitment tools. Its advanced natural language/rules-based technology actually distinguishes resumes from other types of information on the Internet. It extracts resume data to obtain skill, location, contact, and other relevant information, automatically comparing this data to your search criteria.

It's Thorough
Based on its intelligent search, Webhire Agent creates a consolidated, ranked list of qualified candidates and previous search results are retained to ensure only new candidates are identified. Webhire Agent then automatically contacts each candidate with a personalized email message, inviting them to visit your Web site or correspond by e-mail to register their interest in the position.

It's Effective
Because Webhire Agent analyzes the entire text of each resume, instead of limited keywords, it finds the candidates other search tools miss. It evaluates each candidate's qualifications, geographic location, and resume date to put the best candidates at the top of the list.

It's Efficient
By reducing the time and cost of locating qualified candidates, Webhire Agent frees recruiters to focus on what they do best-interviewing and closing the candidates your company needs to compete.

Give your recruiters the intelligent, automated edge in Internet recruiting . . . Webhire Agent!

Webhire provides Internet Recruiting solutions to corporations that help employers use the Web to quickly and cost-effectively post jobs on the Web, attract and evaluate talent and manage the hiring process.

With equity partners like SOFTBANK and Yahoo!, Webhire is the leading ASP in the Internet Recruiting Marketplace.

We are traded on NASDAQ under the symbol HIRE.

Webhire Facts News and Events Investor Information Employment Opportunities Partners

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT COMMISSIONER FOR PATENTS
Washington, D.C. 20231

Mailed

MAR 2 2 2000

Director's Office
Group 2700

MARK POHL
55 MADISON AVENUE, 4TH FLOOR
MORRISTOWN, NJ 07960

Paper No. 13

In re Application of Ruening
Appl. No.: 08/984,650
Filed: December 3, 1997
For: CANDIDATE CHASER

DECISION ON PETITION TO MAKE SPECIAL
37 CFR 1.102

This is a decision on the petition under 37 CFR 1.102, filed February 22, 2000, to make the above-identified application special.

Petitioner(s) request that this application be made special under the accelerated examination procedure set forth in MPEP 708.02, Section II: Infringement.

A grantable petition to make an application special under 37 CFR 1.102 and in accordance with MPEP 708.02, Section II, must be accompanied by the required fee pursuant to 37 CFR 1.17(i) and a statement by applicant(s) or assignee or a statement by an attorney/agent registered to practice before the PTO in support of the petition stating:

1. that there is an infringing device or product on the market or method in use,

2. that a rigid comparison of the alleged infringing device, product or method with the claims of the application was made,

3. that some of the claims are unquestionably infringed, and

4. that a careful search of the prior art was made or that applicant(s) have good knowledge of the pertinent prior art.

The petition meets the requirements for special status.

For the above stated reasons, the petition is Granted.

If the examiner can make this application special without prejudice to any possible interfering application, and the examiner should make a rigid search for such, the examiner is authorized to

do so for the next action. Should the application be rejected, the application will not be considered special for the subsequent action unless the applicant promptly makes a bona fide effort to place the application in condition for allowance, even if necessary to have an interview with the examiner to accomplish this purpose.

If the examiner finds any intervening application for the same subject matter, the examiner should consider such application simultaneously with this application and should state in the official letter of such application that the examiner has taken it out of turn because of a possible interference.

Should an appeal be taken in this application or should this application become involved in an interference, consideration of the appeal and the interference will be expedited by all PTO officials concerned, contingent like upon diligent prosecution by applicant.

The petition is granted to the extent indicated.

James J. Groody (703) 308-5461
Special Program Examiner
Technology Center 2700
Communications and Information Processing

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/964,550	11/05/97	REININGER	9

022525
MARK POHL
55 MADISON AVENUE
4TH FLOOR
MORRISTOWN NJ 07960

TM11/0703

EXAMINER	
ROMAIN, J	

ART UNIT	PAPER NUMBER
2163	

DATE MAILED: 07/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

PTO-90C (Rev. 2/95)

2 - Mail Copy

Notice of Allowability	Application No. 08/984,650	Applicant(s) REUNING, STEPHEN MICHAEL	
	Examiner Sam Rimell	Art Unit 2166	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance and Issue Fee Due or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to _____.
2. ☒ The allowed claim(s) is/are 4-18.
3. ☐ The drawings filed on _____ are acceptable as formal drawings.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some* c) ☐ None of the:
      1. ☐ Certified copies of the priority documents have been received.
      2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
      3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

   * Certified copies not received: _____.
5. ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE FOR SUBMITTING NEW FORMAL DRAWINGS , OR A SUBSTITUTE OATH OR DECLARATION. This three-month period for complying with the REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL is extendable under 37 CFR 1.136(a).**

6. ☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.

7. ☒ Applicant MUST submit NEW FORMAL DRAWINGS
   (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review(PTO-948) attached
      1) ☐ hereto or 2) ☒ to Paper No. 9.
   (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the examiner.
   (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

8. ☐ Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Any reply to this letter should include, in the upper right hand corner, the APPLICATION NUMBER (SERIES CODE / SERIAL NUMBER). If applicant has received a Notice of Allowance and Issue Fee Due, the ISSUE BATCH NUMBER and DATE of the NOTICE OF ALLOWANCE should also be included.

Attachment(s)

1☐ Notice of References Cited (PTO-892)
3☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
5☐ Information Disclosure Statements (PTO-1449), Paper No. ____.
7☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

2☐ Notice of Informal Patent Application (PTO-152)
4☒ Interview Summary (PTO-413), Paper No. 28 .
6☒ Examiner's Amendment/Comment
8☒ Examiner's Statement of Reasons for Allowance
9☐ Other

Sam Rimell
Primary Examiner
Art Unit: 2166

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mark Pohl on 6/27/01.

For each of claims 4, 8, 9 and 11: Change the phrase "experiences, interests, capabilities, professional titles or talents" to --professional qualifications--

For claim 4 only: Before the word "extracting" insert the phrase --for Internet site pages or web postings meeting said user defined criteria, electronically--

Claims 19-24: Cancel these claims.

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (703) 306-5626.

Sam Rimell
Primary Examiner
Art Unit 2166

Interview Summary	Application No.	Applicant(s)	
	08/984,650	REUNING, STEPHEN MICHAEL	
	Examiner	Art Unit	
	Sam Rimell	2166	

All participants (applicant, applicant's representative, PTO personnel):

(1) *Sam Rimell*. (3)_____.

(2) *Mark Pohl*. (4)_____.

Date of Interview: *27 June 2001* .

Type: a)☒ Telephonic b)☐ Video Conference
c)☐ Personal [copy given to: 1)☐ applicant 2)☐ applicant's representative]

Exhibit shown or demonstration conducted: d)☐ Yes e)☒ No.
If Yes, brief description:

Claim(s) discussed: *4* .

Identification of prior art discussed:

Agreement with respect to the claims f)☒ was reached. g)☐ was not reached. h)☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: *Agreed To Examiner's Amendment to place application in condition for allowance.*

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i)☒ It is not necessary for applicant to provide a separate record of the substance of the interview(if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record
A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews
Paragraph (b)
In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.
All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:
- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of Interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case unless both applicant and examiner agree that the examiner will record same. Where the examiner agrees to record the substance of the interview, or when it is adequately recorded on the Form or in an attachment to the Form, the examiner should check the appropriate box at the bottom of the Form which informs the applicant that the submission of a separate record of the substance of the interview as a supplement to the Form is not required.

It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:
1) A brief description of the nature of any exhibit shown or any demonstration conducted,
2) an identification of the claims discussed,
3) an identification of the specific prior art discussed,
4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
5) a brief identification of the general thrust of the principal arguments presented to the examiner,
   (The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
6) a general indication of any other pertinent matters discussed, and
7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Allowable Subject Matter

REASON FOR ALLOWANCE

1. Claims 4-18 are allowable .

2. The Office action of paper number 22 has been vacated since there is not adequate evidence that the references could be obviously combined together, particularly in light of applicant's arguments.

3. The following is an examiner's statement of reasons for allowance:

This instant invention is directed to a nonobvious improvement over the invention described in Patent number 5,832,497 to Taylor. This invention teaches the combination of comparing text against professional qualifications and electronically extracting e-mail addresses when those qualifications are met as recited in independent claim 4. Taylor only performs the comparison of text and does not suggest any extraction step involving e-mail data. There is no evidence that it would have been obvious to modify Taylor to perform extraction of e-mail addresses.

Drawings

4. The application having been allowed, formal drawings are required in response to this Office action.

Formal drawings are now required and must be filed within the THREE MONTH shortened statutory period set for reply in the "NOTICE OF ALLOWABILITY" (PTOL-37 or PTO-37). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a). Failure to timely submit the drawings will result in **ABANDONMENT** of the application. The drawings should be submitted as a separate paper with a transmittal letter which is addressed to the Official Draftsperson. The art unit number, application number and number of drawing sheets should be written on the reverse side of the drawings.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Romain Jeanty whose telephone number is (703) 308-9585. The examiner can normally be reached on weekdays from 7:30 a.m to 6:00 p.m.

If attempts to reach the examiner are not successful, the examiner's supervisor, Tariq R Hafiz can be reached at (703) 305-9643.

The fax number for Formal or Official faxes to Technology Center 2700 is (703) 308-9051 or 9052. Draft or Informal faxes for this Art Unit can be submitted to (703) 308-5357.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703)308-3900.

Romain Jeanty

Art Unit 2163

June 29, 2001.

[1] The question presented by the appeal is a very simple one and, although counsel have managed to pile up more than 400 pages of record and 80 pages of brief, we think it can be dealt with in a very few paragraphs. The question is simply whether "Wander," applied to a drug used chiefly in the treatment of tuberculosis, is likely to cause confusion with "Warner," used for a wide range of pharmaceuticals. The Assistant Commissioner decided that it was not. We agree.

Warner has used its trademark extensively since 1920, has spent large sums on advertising and enjoys a very valuable goodwill, symbolized by the mark which has acquired a secondary meaning in the field of pharmaceuticals. Wander has used its trademark (which was, in fact, the surname of the founder of the business) since 1951 for the tuberculosis remedy, known as "P.A.S." These facts were taken into consideration by the Assistant Commissioner in reaching her decision as appears from her opinion.

The appellant complains of a number of errors on the part of the Assistant Commissioner, the chief ones being that the conclusions reached by her as to the connotations of the words were not supported by enough evidence[1] but were intuitive or subjective. We think that her conclusions would have been proper had there been no evidence at all. It did not require evidence to enable the Assistant Commissioner to conclude that Wander is a common word and unlikely to create a surname impression and that Warner, although having a common meaning, albeit one seldom met with, creates the impression of being a surname.

[2] In determining whether a likelihood of confusion exists between trademarks "the judgment of the eye and ear is more satisfactory than evidence from any other source." Glenmore Distilleries Co. v. National D. Prod. Corp., 28 F.Supp. 928, 931, 39 USPQ 65, 69 (E.D. Va.) (affirmed, 101 F.2d 479, 40 USPQ 264 (C.A. 4th)). See Liggett & Myers Tobacco Co. v. Finzer, 128 U.S. 182. These two marks perhaps look somewhat alike but not enough to be confusingly similar, and they do not sound alike. Both parties direct their advertising entirely to physicians and pharmacists—a highly intelligent and discriminating public. The evidence presented fell far short of overcoming the "judgment of the eye and ear."

Affirmed.

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47 CCPA 1142

Court of Customs and Patent Appeals

In re LUNDBERG AND ZUSCHLAG

Appl. No. 6571 Decided July 20, 1960

PATENTS

1. Prior adjudication—Applications for patent (§ 56.05)

In reviewing rejection of claims of continuation application on ground of res judicata based on rejection of claims in parent application, starting point is a comparison of what is claimed in applications; if claimed subject matter is the same, the prior adjudication is binding; if differences appear, court looks to their nature and significance; if difference is one which would not be obvious to one of ordinary skill in the art, the prior adjudication is not a ground for rejection; the difference is between previously adjudicated claims and appealed claims, not between appealed claims and prior art; patentability over prior art is not reconsidered as a virgin problem; on the contrary, prior decision stands, right or wrong, for all disputed issues there decided, and court determines patentability of new claim over adjudicated claim, considering prior art, if necessary, only if sustantial differences between claims exist; public policy which is implemented by this rule is that there shall be an end to litigation, that when one has exhausted remedies provided by law he shall not be permitted to go through the process all over again.

2. Prior adjudication—Applications for patent (§ 56.05)

In cases appealed to Court of Customs and Patent Appeals, or taken to District of Columbia courts under 35 U.S.C. 145, involving ex parte prosecution of patent applications, what must be borne in mind with respect to res judicata is distinction between claims to different inventions and different claims to same invention; where different inventions are claimed, res judicata does not preclude a new consideration but, where applicant is merely presenting new claims to same invention, the patentability of which he has already argued before court, reconsideration of issue of patentability is proscribed by res judicata.

3. Construction of specification and claims—Introductory phrase (§ 22.55)

Statement in claim that apparatus is "for determining the existence, location, outline and depth of sought for mineral deposits in the earth" is no more than a preamble, is but the object or purpose of the apparatus, does not define structure, and cannot be relied on to differentiate claim from rejected claim in parent application.

Particular patents—Geophysical Exploration

Lundberg and Zuschlag, Apparatus for and Method of Geophysical Exploration, claims 1 to 11 of application refused.

Appeal from Board of Appeals of the Patent Office.

Application for patent of Hans T. F. Lundberg and Theodore Zuschlag, Deceased, by Johanna Zuschlag, Administratrix, Serial No. 523,784, filed July 22, 1955; Patent Office Division 48. From decision rejecting claims 1 to 11, applicants appeal. Affirmed.

See also 94 USPQ 73, 113 USPQ 530.

E. CLARKSON SEWARD, New York, N. Y., for appellants.

CLARENCE W. MOORE (D. KREIDER of counsel) for Commissioner of Patents.

Before WORLEY, Chief Judge, RICH, MARTIN, and SMITH, Associate Judges, and KIRKPATRICK, Judge.°

RICH, Judge.

This appeal is from the affirmance by the Patent Office Board of Appeals of the examiner's rejection of claims 1-11, all of the claims of appellant's application No. 523,784, filed July 22, 1955 for "Apparatus for and Method of Geophysical Exploration."

The application at bar is stated to be a continuation of application No. 2885, filed January 17, 1948 as a division of application No. 561,436, filed November 1, 1944.

Application No. 2885 was before this court with respect to claims 51 and 54-58 thereof, the rejection of which was affirmed in In re Lundberg et al., 44 CCPA 909, 244 F.2d 543, 113 USPQ 530 (decided in 1957). Application No. 561,436 was also before this court in In re Lundberg et al., 39 CCPA 971, 197 F.2d 386, 94 USPQ 73 (decided in 1952), wherein the rejection of claims 99-116 of that application was affirmed. (The last-mentioned application is said to have matured into Patent No. 2,636,924.)

The instant application, being filed as a continuation of one which had been prosecuted (as was its parent) through appeal to this court, was treated as "special" and reached its final rejection by the examiner on the second action in less than five months from its filing, following what appellants admitted was an "effective" pendency of over ten years, qualified by the assertion that the claims here are "new claims drawn in accordance with the express permission of the new Patent Act ° ° ° presented for fresh consideration in compliance with the salutary changes made by the new Act for the benefit of inventors."

As is apparent from the fact that the instant application is a "continuation" of No. 2885, the invention *disclosed* in the application here on appeal is the identical invention which was before this court in the second Lundberg et al. case, supra, decided in 1957.

The claimed invention here, as in the former case, relates broadly to aerial geophysical exploration for the purpose of determining, by detection and measurement of anomalies in the earth's magnetic field, the existence, location, outline, and depth of sought for mineral deposits in the earth. All appealed claims except 3 and 5 are directed to apparatus and those two claim a method. Whichever way the invention is defined, it is practiced by carrying through the air above the terrain being examined, means for detecting and measuring a component of the magnetic fields encountered, while automatically stabilizing said means with respect to level and orientation, recording the measurements made, relating them to the terrain, and interpreting the results.

In the prior appeals we affirmed rejections of the claims as unpatentable over prior art. In the present case claims 1-11 are likewise rejected on prior art but additionally they all stand rejected on the ground of res judicata[1]

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[1] As one authority for this proposition the appellant cited General Shoe Corp. v. Lerner Bros. Mfg. Co., Inc., 45 CCPA 872, 254 F.2d 154, 117 USPQ 281. If that opinion be read, it will be seen that the reason why the Commissioner was reversed was that he had relied on too much evidence.

° United States Senior Judge for the Eastern District of Pennsylvania, designated to participate in place of Judge O'CONNELL, pursuant to provisions of Section 294(d), Title 28, United States Code.

[1] In view of the consistent use by the examiner, the board, and the appellants (but not the Patent Office Solicitor) of the expression res adjudicata, attention is directed to the following from Black's Law Dictionary, 3rd Ed.:

Res adjudicata. A common but indefensible misspelling of res judicata. The latter term designates a point or question or subject-matter which was in controversey or dispute and has been authoritatively and finally settled by the decision of a court. Res adjudicata (if there be such a term) could only mean an article or subject of property "awarded to" a given person by the

by reason of the later of our two prior decisions, supra. Claims 1-5 (all of those initially presented) were so rejected on the first action, the next and final action so rejected all claims, and the board affirmed this rejection, citing In re Ellis, 24 CCPA 759, 86 F.2d 412, 31 USPQ 380. It also affirmed the rejection on prior art. We will consider first the issue involving res judicata.

[1] The starting point is a comparison of what is claimed here *with the relevant claims in the prior case.* If the claimed subject matter is the same, the prior adjudication is binding; if differences appear, then we look to their nature and significance. If the difference is one which would not be obvious to one of ordinary skill in the art, the prior adjudication is certainly not a ground for rejection. But, we repeat, the difference is between the previously adjudicated claims and the appealed claims, not between the present claims and the prior art. We emphasize this in view of appellant's effort to ge a de novo consideration on the basis of the prior art alone, a contention implicit in the following excerpt from appellants' brief:

> This last named ground [res judicata] seems to Appellants to be practically moot because, if this Court agrees that some or all of the claims are patentable, the holding of res adjudicata [sic] is eliminated; while if all the claims are held to be unpatentable, the said ground is superflous.
>
> And again:
>
> ° ° ° the holding of res adjudicata [sic] is subservient to the holding of patentability.

Patentability over prior art is not reconsidered as a virgin problem. On the contrary, the prior decision stands, right or wrong, for all disputed issues there decided, In re Prutton, 40 CCPA 975, 980, 204 F.2d 291, 295, 97 USPQ 447, 450, and we determine patentability of the new claim *over the adjudicated claim*, considering prior art, if necessary, only if substantial differences between the claims exist. The public policy which is implemented by this rule is that there shall be an end to litigation, that when one has exhausted the remedies provided by law he shall not be permitted to go through the process all over again. Appellants' brief shows no awareness of this legal principle in repeatedly "urgently requesting" us to review our former holdings and revaluate the references in the light of the new claims.

[2] In cases appealed to this court, or taken to the District of Columbia courts under 35 U.S.C. 145, involving the ex parte prosecution of patent applications what must be borne in mind with respect to res judicata is the distinction between claims to different inventions on the one hand and different claims to the same invention on the other. Where different inventions are claimed, res judicata does not preclude a new consideration; but where an applicant is merely presenting new claims to the same invention, the patentability of which he has already argued before the court, reconsideration of the issue of patentability is proscribed by the doctrine of res judicata.

Turning now to the appealed claims, claim 1 is the appartus claim on which dependent claims 2 and 6-11 are based and is like claim 4 except for differences which will be pointed out later. Claim 1 reads:

> 1. Apparatus for geophysical exploration from the air *for determining the existence, location, outline and depth of sought for mineral deposits in the earth* comprising, the combination with a maneuverable airplane adapted to transport an operating crew and the hereinafter recited equipment, of means carried thereby for detecting and measuring while in the air with a precision sensitivity capability of one gamma or less at least one component of magnetic fields related to such deposits, operatively connected means for automatically stabilizing said detecting and measuring means in relation to level and orientation for maintaining its detecting and measuring sensitivty regardless of motions of the airplane, and means operatively connected with the detecting and measuring means for automatically and simultaneously making a record of the measurements as they occur. [Emphasis ours.]

Claim 54 of application No. 2885 before us in Lundberg et al., 44 CCPA 909, 113 USPQ at 531-532, supra, reads as follows:

> 54. Apparatus for geophysical exploration from the air comprising, the combination with a maneuvable airplane adapted to transport an operating crew and the hereinafter recited equipment, of a magnetic detecting instrument carried by the airplane and adapted while in the air automatically to receive and respond to with a sensitivity of one gamma or less magnetic effects of earth anomalies related to mineral deposits, a support for said detecting instrument carried by the airplane in operative association with the detecting instrument and adapted automatically to stabilize the latter in relation to level and orientation regardless of motions of the airplane, and a record making device also carried by the airplane in operative association with the detecting instrument and adapted simultaneously to make a record of the said effects of the said anomalies to which the detecting instrument responds.

[3] It is clear that these two claims define the same combination of airplane detecting and measuring means, stabilizing means, and recording means albeit the language is changed. The principal difference presented to us appellants as having significance is the italicized passage in claim 1, it being argued that this is "a definite limitation, rather than a mere introductory preamble, because it directly *specifies the apparatus claimed* which comprises the thereafter recited elements." We are unimpressed by this contention. It is clearly no more than a preamble, is but the *object or purpose of* the apparatus, does not define structure and, as the Patent Office solicitor pointed out, is implicit in the words "for geophysical exploration." It cannot be relied on to differentiate claim 1 from claim 54. Appellants similarly argue about several other less evident changes in verbiage which we have carefully considered but the distinctions are even more tenuous and we see no need to discuss them. The claims speak for themselves. We find the same invention is being claimed in claim 1 as was claimed in claim 54.

Claim 4 differs from claim 1 in omitting the airplane as a positive element of the combination while using the preamble "Apparatus for aerial flight magnetic geophysical exploration for determining" etc. Appellants point to other differences from claim 1, an example being that "this claim refers to 'magnetic fields *indicative* of such deposits' instead of merely saying '*related* to such deposits'." It is clear to us that it is in the same class as claim 1, a claim to the same invention in substance as claim 54 of No. 2885, though broader with respect to the means for achieving "aerial flight" and perhaps somewhat narrower in some other respects.

Claims 3 and 5 are to a method of magnetic geophysical exploration using the apparatus broadly defined in claim 1 and differ from each other much as claims 1 and 4 differ, claim 3 exploring "from an airplane" while claim 5 calls for "aerial flight" exploration. Claim 3 reads:

> 3. A method of magnetic geophysical exploration from an airplane for mineral deposits in the earth which includes the following steps: flying through the air above the terrain being explored means for automatically detecting and measuring with a precision sensitivity capability of one gamma or less at least one component of the magnetic field or fields encountered while automatically stabilizing the said detecting and measuring means in relation to level and orientation against motions of the airplane and simultaneously making a record of the measurements; identifying for desired subsequent operations the area or areas indicated by the record as containing a sought for deposit or deposits; and interpreting the record for determining the location, outline and depth of the deposit or deposits.

Claim 55 in the appeal on application No. 2885 reads:

> 55. A method of geophysical exploration from a maneuverable airplane which includes the following steps: transporting by such an airplane over an area under investigation an operating crew and magnetic detecting equipment capable of automatically receiving and responding to with a sensitivity of one gamma or less effects of earth anomalies related to mineral deposits, such as changes in the earth's magnetic field or a magnetic field artificially created in the earth; automatically stablizing said detecting equipment in relation to level and orientation during transportation regardless of motions of the transporting airplane; automatically making a record of the said effects of such anomalies which the detecting equipment receives and to which it responds as it responds thereto; identifying for subsequent examination the terrain indicated by the said received and recorded effects as containing such anomalies; and geophysically interpreting the record thus obtained.

We are unable to see how a reading of these claims can lead to any other conclusion than that they define substantially the same invention. Aside from pointing out that the same arguments apply as those made with respect to claim 1, all appellants do here is point to such immaterial differences as that between identifying the "area" containing a deposit (claim 3) and identifying the "terrain" containing the anomalies (claim 55), asking us to reconsider patentability over the art because of such differences. Appellants have had their day in court on this method and are not entitled to such reconsideration.

Apparatus claims 2 and 6-10 depend from claim 1, adding thereto progressively limitations to a "permeability bridge" as the "detecting and measuring" means recited in claim 1 and various details of that bridge. Claim 2

judgment of a court, which might perhaps be the case in replevin and similar actions.

calls for "a permeability bridge" broadly without further limitation, claim 6 for an "alternating current-direct current permeability bridge" and claims 7-10 depend each from the preceeding claim, adding further details. Claim 7 reads:

> 7. Apparatus as defined in claim 6, in which the permeability bridge includes *at least one* pick-up *coil having a core composed of* highly permeable *material* that is extremely sensitive to magnetic variations and resists change in its operative characteristics when exposed to mechanical vibrations and thermic and barometric fluctuations, *such as nichrome.* [Emphasis ours.]

Claim 51 in application No. 2885, previously adjudicated, reads:

> 51. Apparatus as defined in claim 54, in which the detecting instrument is provided with *at least one coil having a core composed of metal* which is not only extremely sensitive to variations in intensity of natural or artificially created magnetic fields but is also strongly resistive to change in its operative characteristics when exposed to mechanical vibrations, thermal variations, or barometric fluctuations, *such as nichrome.* [Emphasis ours.]

The supporting disclosure behind both of these claims is, of course, identical since we are dealing with a continuing application and is, in part, as follows:

> This detecting or investigating mechanism may be defined as an alternating current-direct current permeability bridge similar to that described in United States patent to Theodore Zuschlag No. 1,896,737, dated February 7, 1933. This instrument or mechanism is based upon a magnetic effect set up in a nichrome wire, or its equivalent, which is used as a core in a coil energized by an alternating current simultaneously exposed to the effects of a direct current generated in a substantially uniform field being investigated.

Zuschlag patent No. 1,896,737 discloses a Wheatstone bridge network for detecting magnetic field fluctuations which occur in the magnetic testing of rails or the like, the bridge containing a pair of coils with ferro-magnetic cores, which the instant as well as the prior application suggests may be nichrome.

Claims 2 and 6 fall with claim 7 since they are simply intermediate claims 1 and 7 in scope. Claims 8, 9 and 10 merely add, successively to claim 7, connection to a source of alternating current for energizing the coil or coils, means for adjusting the field strength affecting the pick-up cores and the independent adjustment thereof. Appellants make no argument as to these last three claims, as distinguished from the others, merely pointing out that they add "more and more details." Perforce, since Zuschlag is relied upon by appellant as the sole support for the specific limitations of the bridge recited in claims 2 and 6-10, Zuschlag is also prior art for these same limitations. However, one must still decide whether res judicata prevents reexamination of the patentability of the cambination. Claim 51 in our prior case included, as the detector, a coil having a specific type of core. This is the same coil and core detector which appellant now recites as merely included in a permeability bridge circuit, or a permeability bridge circuit the details of which were known to one skilled in the art. The bridge and single core perform identical functions in the combination, each measuring magnetic field variations in the same manner, any differences in sensitivity apparently depending only on the details of the detector itself and not on the combination. We are therefore of the opinion that res judicata is controlling insofar as claims 2 and 6-10 are for the *same invention* as the claims in the prior case (the use of a coil and core detector). Insofar as they differ by merely progressively decreasing in scope by including obvious features shown by Zuschlag, they are hereby held to be unpatentable over the prior adjudicated invention.

Claim 11 depends from claim 1 and reads:

> 11. Apparatus as defined in claim 1, in which the detecting and measuring means includes a plurality of magnetrons, a main field coil coaxially surrounding and operatively connected with each magnetron, an auxiliary field coil coaxially positioned with respect to and operatively connected in opposition to each main coil, and a record making device operatively connected with the magnetrons.

The feature of claim 11 is the use of the defined magnetron circuit as the "detecting and measuring" means which is one element of the combination broadly defined in claim 1, including a *plurality* of magnetrons, associated main field coils and an auxiliary field coil related in a particular way to each main coil. The "record making device" would appear to be the "means for automatically and simultaneously making a record" of claim 1 (which has its counterpart in claim 54 of No. 2885) with the requirement that it be "connected with the magnetrons."

In the prior case application No. 2885 also had claims to magnetron circuits as follows:

> 57. Apparatus as defined in claim 54, in which the detecting instrument includes *at least one magnetron* together with *a control coil operatively connected thereto* and means for supplying electric current to the control coil. [Emphasis ours.]
>
> 58. Apparatus as defined in claim 57, which also includes an *auxiliary feedback coil* connected in opposition to the control coil. [Emphasis ours.]

Examination of claim 58, including the subject matter of claim 57 on which it is dependent, reveals that it differs from claim 11 in the instant case only as respects the use of a "plurality of magnetrons" as opposed to "at least one" and in the coaxial positioning of the two coils associated with each magnetron. In our opinion on application No. 2885, as to claims 57 and 58 this court said, 113 USPQ at 536-537:

> As aforesaid, the "Physical Review" article discloses the general adaptation of magnetron circuits to the measurement and detection of magnetic fields. Also, we have previously pointed out that the Hull reference fairly suggests the use of a magnetometer of a sensitivity of one gamma for use as the detecting instrument. It would be obvious to one skilled in the art, in view of the foregoing, to substitute a magnetron for the magnetometer detecting instrument of Hull.

° ° °

With reference to claim 58, the board stated that the use of feedback members in electrical circuits is well known. Appellants have failed to question the accuracy of said statement by requesting that it be supported by an affidavit under Patent Office Rule 107 and did not present any evidence to contradict it. Therefore we are constrained to accept it as true. In re Lewis, 25 CCPA 1273, 96 F.2d 1009, 37 USPQ 786. In view of this fact, we fail to see that it would be inventive to use a feedback coil in conjunction with a conventional magnetron coil as broadly recited in claim 58. The rejection of claim 58 is accordingly sustained.

The holdings on these disputed issues were necessary to our finding that the claims in the prior case were unpatentable and res judicata precludes a reexamination of those prior holdings.

In Hall's "Physical Review" article (one of the references in both this and the prior case) the magnetron control coil is described as "a solenoid wound around the magnetron," and is also illustrated as coaxial with the magnetron. In positioning the auxiliary as well as the main field coil, one skilled in the art would coaxially position the windings and the magnetron to obtain the proper effect on the electron beam in the magnetron. The use broadly of a "plurality of magnetrons," as called for by claim 11, without limitation as to positioning or specific circuit connections is clearly suggested by the prior art bridge circuits which incorporate a plurality of magnetometers in the various arms of a balanced bridge circuit. Claim 11 is unpatentable because insofar as it would require a reexamination of the identical issues raised in the prior case, because of inclusion of the same subject-matter as the prior claims, res judicata controls and insofar as it differs from the claims previously adjudicated we hold that those differences are only such as would be obvious and hence unpatentable.

With respect to appellants' general allegation that they were entitled to have their application passed on according to the law as set forth in the Patent Act of 1952, our review convinces us that the applications have been so treated at all times subsequent to the effective date of that act. The applications formerly before us were certainly so treated in this court. However, we did not always agree with appellants on the construction of various provisions of that act, nor do we now.

The decision of the board is *affirmed.*

. . . nevertheless, (the inventor would) be entitled to have his patent construed with reference to that unspoken advantage since the patentee is entitled to the benefit of every function within the scope of the claims and actually possessed by his mechanisms, even if he does not know of it at the time of the patenting . . . no obligation rests upon the patentee to turn his specification into a trade circular.

Or as Judge Buffington said in the language previously quoted from Mead-Morrison Mfg. Co. v. Exeter Machine Works, supra,

The gist of a disclosure is that it be so full as will enable those versed in the art to thereafter use the device and where such use, practice, mechanism, formula, etc. are fully disclosed, the requirements of the law are satisfied, without claiming every advantage such device may have. If subsequent use discloses unsuspected additional benefits the patentee is the gainer during the life of the patent, and the public when it expires.

Stanley D. Schwartz *

RES JUDICATA AS APPLIED IN PATENT OFFICE PROSECUTION & PATENT ENFORCEMENT LITIGATION

Introduction

The topic of res judicata, as applied to patent enforcement litigation and Patent Office proceedings, has long been, and continues to be, a subject of much interest. The President's Commission, which has recently concluded a study on the United States Patent System, has resulted in a proposal, to Congress, that the traditional notions of res judicata, as now applied in patent infringement suits, be relaxed. Such a relaxation of the rigid rules of res judicata has already been achieved in administrative proceedings before the U.S. Patent Office.

It is the purpose of this paper to examine the status of res judicata both in administrative proceedings before the Patent Office and in patent enforcement litigation. It is an object of this paper to show how the law of res judicata has reached a degree of certainty in proceedings before the Patent Office, although application of res judicata principles in patent enforcement litigation is still in the developing stage. The direction and scope of these principles will be most important to the patent owner and the public at large. It is, therefore, a further object of this paper to suggest a direction that Congress may take, in order to maximize the interests of both the public, in general, and business, in particular, while at the same time protecting the legitimate interests of the patentee.

Traditional Notions of Res Judicata and Collateral Estoppel

Res judicata,[1] under current usage, has been used to describe the effects of various types of judgments. Res

* Examiner, Group 160.

[1] For a general discussion of res judicata and collateral estoppel, see 1 B Moore, Federal Practice § .401-.488 (Fed. 1965); *Developments in the Law—Res Judicata*, 65 Harv. L. Rev. 818 (1952).

judicata and its variants all seek to provide the element of finality to judicial determinations and an end to litigation between parties. This may be accomplished by considering the former judgment as a "bar" or "merger" where the subsequent action proceeds on all, or part, of the very cause of action which was the subject of the first action. This aspect of the doctrine of res judicata, sometimes called res judicata by bar or merger, differs from the second aspect of res judicata, estoppel by judgment. If the second action is upon a different claim or demand, an estoppel by judgment, more limited in its scope than res judicata by bar, operates as an estoppel only as to those matters upon which a determination or final verdict was actually rendered.[2]

Under the doctrine of res judicata, a valid, final and prior adjudication rendered on the merits of a cause of action or claim, can bar relitigation by parties or their privies, of the same claim or cause of action, the judgment in the prior action operates as an absolute bar to relitigation, not only of those matters actually litigated in the prior suit, but also any other matter which might have been acted upon in the prior suit.

Under the Federal Rules of Civil Procedure[3] the doctrine of res judicata is given a more rigid application because all possible theories of relief can be included under one claim. This is unlike the various code systems wherein there is a very strict theory of pleading which results in a more liberal application of res judicata.[4]

Although a party may be precluded from relitigating a particular claim, under the rules of res judicata, a litigant is afforded a wide range of protection from a judgment. In the proper case, a judgment may be vacated

[2] Cromwell v. County of Sac, 94 U.S. 351 (1876). This case provides an excellent discussion as to the distinctions between res judicata by bar and estoppel or by judgment or collateral estoppel. (See P. 550—James on Civil Procedure). This distinction has been confirmed and restated by the Supreme Court in Tait v. Western Md. Ry., 289 U.S. 620, 623(19); Commissioner v. Sunnen, 333 U.S. 591, 597 (1948).

[3] Fed. R. Civ. P. 8(a).

[4] See James, *supra* note 1 at 553-557.

or amended by direct or collateral attack.[5] For example, a litigating party may seek to be relieved from the unjust effects of a "void" judgment.[6] A judgment may also be reopened by a motion for a new trial[7] or may be altered or amended by a motion to alter or amend the judgment[8] or for newly discovered evidence, "which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)."[9]

Under the doctrine of collateral estoppel,[10] where there is a different claim or cause of action commenced, and the same issues were tried and previously determined, they cannot be litigated again.[11] Where collateral estoppel is involved between the same parties as in the original suit, the one who claims its benefits must show that the very fact or point in issue was, in the former action, litigated by the parties, determined by the court, and the determination of the matter or point must have been necessary to the result.[12]

Rulings of law, divorced from the facts to which they are applied, do not become binding upon the parties under the principle of res judicata, although rulings upon the legal consequences of specific facts are entitled to collateral estoppel effect equally with findings of fact.[13]

Res Judicata in Administrative Proceedings[14]

As Professor Davis succinctly notes:

the reasons against a second litigation between the same parties of the same claim or issues are precisely the same for some ad-

[5] See 1 B Moore, 13, § 0.405(1), at 622; see also James, *supra* note 1, at 532-49.

[6] Fed. R. Civ. P. 60(b) provides that a motion to vacate a judgment on the ground that it is void must be "made within a reasonable time."

[7] Fed. R. Civ. P. 59(a)-(d).

[8] Fed. R. Civ. P. 59(e).

[9] Fed. R. Civ. P. 60(b)(2).

[10] See, in general, Scott, *Collateral Estoppel by Judgment*, 56 Harv. L. Rev. 1 (1942); Polasky, *Collateral Estoppel—Effects of Prior Litigation* 39 Iowa L. Rev. 217 (1954).

[11] Cromwell v. County of Sac, *supra* note 2, at 353.

[12] Polasky, *supra*, at 222.

[13] Commissioner of Internal Revenue v. Sunnen, *supra* note 2.

[14] Holton, *The Doctrine of Res Judicata in Ex Parte Patent Practice—Prototype for a Liberal Approach*, 10 Rutgers Law Review, 716 (1956).

ministrative determinations as they are for most judicial determinations. The sound view is therefore to use the doctrine of res judicata when the reasons for it are present in full force, to modify it when modification is needed, and to reject it when the reasons against it outweigh those in its favor.[15]

This view of res judicata in the administrative process has also been shared by many courts. In one such case[16] the Court noted:

> While the rules that govern the finality and conclusiveness of adjudications at the common law do not apply, in the strict sense, to administrative or quasi-judicial action in the Executive Departments of Government, yet in administrative action as well as in judicial proceedings, it is both expedient and necessary that there should be an end of controversy. . . . In what we have said we do not desire it to be understood that the Patent Office may not, if it thinks proper so to do, entertain and adjudicate a second application for a patent after the first application has been rejected. What we decide is that it is not incumbent upon the office as a duty to entertain such applications.

Whenever the traditional doctrine of res judicata does not work well, when applied to particular administrative actions, it may be qualified or relaxed, depending on the particular problems involved. Professor Davis notes that the doctrine should be applied in full force, where the particular agency deals in "past facts."[17]

Res Judicata in Ex Parte Patent Office Proceedings

A. *The Requirements of a Final Appellate Decision of the Earlier Case.*

Res judicata, as applied in the United States Patent Office, is a more "relaxed" form of the traditional manner in which res judicata is utilized. The Court of Customs and Patent Appeals (C.C.P.A.), as well as the Board of Appeals of the Patent Office, have relaxed the requirements of the applicability of res judicata so as not to frustrate the patent laws regarding patent prosecution.

[15] Davis, Administrative Law, p. 327.
[16] *In re* Baratt's Appeal, 14 App. D. C. 255 (1899).
[17] Davis, *op. cit. supra* note 14, at 329.

The applicability of res judicata to ex parte proceedings has become somewhat more uniform due to several recent pronouncements by the CCPA.[18] In the ex parte prosecution of a patent application, where an applicant is given a final rejection on his application, he has a choice of two alternative methods of continuing his application in order to secure a patent: he may either appeal the final rejection of the Examiner to the Patent Office Board of Appeals,[19] or he may file a second application.[20] If the applicant chooses the latter course of action, the applicant is given another opportunity to correct a statutorily insufficient disclosure[21] or to disclose a utility as required under 35 U.S.C. 101, etc.

The C.C.P.A. has commented that the application of res judicata to an unappealed final rejection seems to be a particularly inappropriate means for achieving the normal goals of the res judicata doctrine, i.e., reliability and finality of judgments, and conservation of judicial time and energy. . . . [The] Patent Office practice abounds with procedures which afford applicant every opportunity to secure the full protection to which he is lawfully entitled. Often, the filing of a continuation or a continuation-in-part results in a *fresh approach* to and an effective reconsideration of the same issue. In many ways, application is at variance with the entire concept of continuing applications.

With regard to the goal of conserving the time of administrative and judicial tribunals, res judicata rejections would seem to have exactly the opposite effect. For if unappealed final rejections are uniformly held to be res judicata, the applicant has no choice other than appeal or abandonment of his case. But if time and energy are to be expended, even unnecessarily, it is much more desirable that such expenditure should occur at administrative levels. On balance, we believe that an applicant should be encouraged in, rather than penalized for, promptly

[18] *In re* Hitchings 342 F.2d 80, 144 U.S.P.Q. 637 (C.C.P.A. 1965); Application of *In re* Szwarc 319 F.2d 277, 138 U.S.P.Q. 208 (C.C.P.A. 1963); *In re* Fried, 312 F.2d 930, 144 U.S.P.Q. 639 (C.C.P.A. 1963).
[19] 35 U.S.C. 134 (1964).
[20] In order to maintain the filing date of the first application, the applicant may file a continuation application (U.S. Manual of Patent Examining Procedure, § 201.07 (ed. 1961) (hereinafter cited as M.P.E.P.) or a continuation-in-part application (M.P.E.P. § 201.08)).
[21] See 35 U.S.C. 112 for the requirements of a patent application.

filing a better application after final rejection instead of appealing, especially where so much of the procedural machinery of the Patent Office is designed to permit just such a remedy.[22] (Emphasis added)

Prior to the decision in *In re Hitchings*,[23] there were two distinct lines of cases which developed subsequent to the Supreme Court's holding in *Overland Motor Co.* v. *Packard Motor Co.*,[24] that the Patent Office may, in its discretion, apply the doctrine of res judicata in a subsequent application. It was this decision which has caused much of the confusion in the application of res judicata in Patent Office proceedings.

The first line of cases does not provide the Patent Office with any authority to reject on the grounds of res judicata if the unappealed final rejection was based on prior art.[25]

The second line of cases deals with a "special situation," which finds support in section 201.11 (MPEP).[26] While section 706.03(w) of the M.P.E.P. urges that res judicata should only be used where the earlier decision was a "final, appellate one," this section goes on to state that section 201.11 embodies a special situation concern-

[22] See *In re* Hitchings, *supra* note 17, at 85.

[23] *Ibid.*

[24] 274 U.S. 417 (1927). An analysis of the two distinct lines of cases is set forth in 33 Geo. Wash. L. Rev. 1149, 1150 (1965).

[25] This position has support in sections 201.11 and 706.03(w) of the MPEP.

MPEP § 201.07 states in part:

> where an application has been prosecuted to a final rejection, an applicant may have recourse to filing a continuation in order to introduce a new set of claims and to establish a right to further examination by the Primary Examiner.

MPEP § 706.03(w) states in part:

> The rejection should only be used when the earlier decision was a final, appellate one, such as a Board of Appeals decision . . . or a decision by the Court of Customs and Patent Appeals. But see (M.P.E.P.) § 201.11 for a special situation.

[26] MPEP § 201.11 states in part:

> When Not Entitled to Filing Date
>
> Where the first application is found to be fatally defective because of insufficient disclosure to support allowable claims, a second application filed as a "continuation-in-part" of the first application to supply the deficiency is not entitled to the benefit of the filing date of the first application.

ing res judicata.[27] In such a "situation," it has been urged, and so held in numerous decisions,[28] that an attempt to rely on the parent case, rejected on insufficient disclosure, in a continuing application is said by the Patent Office to involve res judicata, even though there was no final appellate decision.[29]

Much of the confusion which has resulted due to the development of the two lines of cases, may be attributed to a lack of understanding of the true meaning of the relevant sections of the MPEP. An examination of section 201.11 will show that it deals expressly with the concept of *continuity* between filing dates and *not* with res judicata.

B. *Issues Must be Identical.*

Before a rejection on res judicata can be had, there is the requirement that the issues in both cases be the same. Thus, where the same claim, or substantially the same claim, has been previously rejected, and sustained on appeal (by the Patent Office Board of Appeals or a higher court, i.e., the Court of Customs and Patent Appeals or the Federal District Court, for the District of Columbia), the applicant cannot again raise the question of its allowability.

Problems arise as to whether the applicant may file a new application with a more complete disclosure, although the claims in the case are the same as the first case which has been rejected on an insufficient disclosure. Where new matter has been added to overcome the alleged deficiency in the original application, a rejection on res judicata should not lie [30] because the issue in the second case has not been previously litigated. The precise

[27] *Ibid.*

[27] See Note, 33 Geo. Wash. L. Rev. 1149 (1965); Kananen, *Comments and Observations on Res Judicata and Patent Law*, 18 W. Res. L. Rev. 103, 112-114 (1966).

[28] The Board of Appeals appeared to stray from this position in Ex parte Pfleger, 342 F.2d 83, 131 U.S.P.Q. 439 (P.O. Bd. App. 1961).

[29] See note 20.

[30] In re Fried, *supra* note 17.

ground of rejection of the first application and its statutory basis must be examined and compared with the ground of rejection and its statutory basis in the second application. Thus, where new matter is introduced in the second application, to overcome the deficiency in the first application, a rejection based on res judicata would be improper because the issues in the two cases are different. In the first case, the issue involved the sufficiency of the disclosure that must comply with the statutory requirements of 35 U.S.C. 112.[31] In the subsequent application, the issue is whether the claims are entitled to the benefit of the earlier filing date of the parent application. In order to have the benefit of the earlier filing date,[32] the invention must be sufficiently disclosed in the parent application so as to comply with section 112.[33]

In the filing of a continuation-in-part, the applicant may be desirous of introducing claims which are narrowed in scope, and which are adequately supported by the disclosure of the parent application. For example, in *In re* Fried,[34] parent application had a generic claim reading "any lower alkyl group" which was held to be based on an insufficient disclosure. In the subsequently filed continuation-in-part, the applicant narrowed the claims to read "methyl group," for which there was adequate support in the parent application. Although the Court said "different claims" were presented, it is not enough to say that there is a different claim presented. In actuality, two different issues were present. In the first case, the issue involved the sufficiency of disclosure under section 112,[35] whereas the issue in the second case involved was one of continuity between filing dates (i.e., did the second case have the benefit of the earlier filing date?).[36]

The Court, in *Fried*,[37] provides an unfortunate example of a mechanical case illustrating the inequity which results if res judicata is used where the prior adjudication was based on claims in the parent case which are broader than the claims presented in the continuation application. Actually, in mechanical cases, unlike chemical cases, *more* disclosure is required to support the more narrow claims, as compared to the generic claims in chemical cases. Therefore, it is possible for the same type of inequity to occur when the broader claims are presented in the continuing application.[38] The Court, in *Kollsman* v. *Ladd*,[39] further stated "that the doctrine of res judicata, or more properly, collateral estoppel, is inapplicable where there are *different claims* rejected on a *different basis* in the continuation application. . . ."[40] This purely mechanical test used by the District Court does not logically answer the question of whether the issues are different. The important question that must be answered before res judicata can be applied, is: whether the disclosure in the parent case is sufficient to support the claims in the continuation-in-part? If there is support, then the claims of the continuation-in-part case will have the benefit of the earlier filing date. If there

[31] 35 U.S.C. 112 states in part: "The specification shall contain a written description of the invention, and of the manner and process of making and using it such *full, clear, concise,* and *exact* terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention." (Emphasis added)

[32] 35 U.S.C. 120 (1964 ed.).

[33] Section 201.11 of the MPEP is also directed to preventing the addition of new matter to supply the deficiency in those cases where the earlier filing date is sought, and this provides the conditions that must be met before an earlier date can be obtained. The second application "must be an application for a patent for an *invention* which is also *disclosed* in the first application." M.P.E.P. 201.11 (emphasis added)

[34] *In re* Fried, *supra* note 17.

[35] See note 31, *supra*.

[36] See note 82, *supra*.

[37] See note 17 *supra*, at 932, n. 3.

[38] Kollsman v. Ladd, 140 USPQ 309 (D.D.C. 1964). The reasoning of the Court in Fried, that although the broad claims of the parent case may be based on an insufficient disclosure, the more narrow claims are likely to find support in the disclosure of the parent case and thus have the benefit of the earlier filing date. This same reasoning does not apply in the reverse situation, where the narrow claims of the parent case as based on an insufficient disclosure, in a mechanical case, because the disclosure would usually encompass claims of a broader scope.

[39] *Ibid.*

[40] *Id.*, at 188.

is no support in the parent case, it may be argued that there is no new issue presented.[41]

Collateral estoppel applies not only to the same claim, or substantially the same claim, but also the claims which present nothing patentably different from the previous claim.[42] In *Lundberg*, the Court held that res judicata will be held where there are differences in the claimed subject matter (i.e., between the previously adjudicated claims and the appealed claims), and such differences are obvious modifications which may be shown by prior art.[43] However, a Board of Appeals decision held that res judicata will not apply where the utility disclosed in the later application differs from that of the former application even though the claims in the two cases are the same.[44]

[41] In Kollsman, the rejection was not on a different basis, but rather involved a determination as to whether the claims of the continuation-in-part (C.I.P.) had sufficient support in the parent case so that the "C.I.P." would have the benefit of the earlier filing date of the parent case.

[42] *In re* Ellis, 1937 C.D. 153 (C.C.P.A. 1937); *In re* Prutton, 97 U.S.P.Q. 447 (C.C.P.A. 1953); *In re* Lundberg et al., 126 USPQ 412 (C.C.P.A. 1960). *In re* Hellbaum, 152 U.S.P.Q. 571 (C.C.P.A. 1967); *Ex parte* Boukidis, 154 U.S.P.Q. 444 (P.O. Bd. App. 1967).

[43] *Id.*

[44] *Ex parte* Schott, 136 USPQ 383 (P.O. Bd. App. 1962). In this case, the Board reversed the res judicata rejection and held that although the claims in the later case were to "precisely the same physical structure," the previous application disclosed its use as a calculating device, whereas the later application disclosed that the device is useful as an instrument for teaching principles of the decimal system, and thus a different issue of patentability was present. The Board said (note at 385) ". . . a prior adjudication should not be considered as binding or be followed when passing upon the same claim where a different question of patentability is presented for adjudication because of new evidence or new issues." (Emphasis added) In *Ex parte* Budde 150 USPQ 469 (P.O. Bd. App. 1966) the Board felt the language used by the Board in Schott was too broad and thus held that applicant could not present new evidence to show unobviousness. The Board reasoned that the additional evidence merely supports applicant's argument in the original appeal, and no new issue (i.e., a new utility) was presented, as in Schott. However in the recent case of *In re* Herr, 153 USPQ 548 (C.C.P.A. 1967), the Court held that res judicata is inapplicable where the applicant presents additional evidence of patentability not presented in the parent case. The court stated. . . "Granted the instant parties and claims are *identical* with those of the parent Herr application and, in a *broad* sense, the issue in the original appeal was, as here, whether those claims were allowable in view of the prior art. More to the point, however, the precise issue in the prior Herr appeal was whether appellant was entitled to the allowance of his claims in the *application* and *record then* on appeal. The precise issue here is whether appellant has legally established his right to those claims in the *application* and *record now* before us."

As a result of recent decisions, the application of principles of res judicata have been considerably relaxed and a degree of stability has been added to ex parte practice.

Res Judicata in Patent Infringement Litigation

According to the doctrine of mutuality of estoppel, in order for a judgment to be binding, the estoppel of the judgment must ordinarily be mutual (the conventional doctrine recognizes some exceptions).[45] Thus a party to a subsequent suit who attempts to utilize either the doctrine of res judicata or collateral estoppel must have been a party, or a privy, to the prior suit,[46] and would also have been bound by the prior judgment had the outcome of the prior suit been opposite.

The doctrine has been the subject of much criticism in recent years and has been departed from, in a recent case,[47] because the rule "runs counter to the salutary public policy that there be a definite end to litigation when a party has had a full, free and untrammeled opportunity to present all facts pertinent to a controversy and to be heard thereon."[48] Critics of the rule desire making collateral estoppel available to those who were not parties to the first action against one who was such a party. Such a result would not be unfair because the one against whom the judgment is invoked would have had the opportunity to litigate the very issue upon which he will be bound.

On the other hand, proponents of the mutuality rule (i.e., a more limited estoppel), believe that a party is

[45] See, e.g., 1 Freeman, Judgments, § 428 (5th ed. 1925).

[46] 1 B Moore, *supra* note 13, § 0.412.

[47] Currie, *Mutuality of Collateral Estoppel: Limits of the Bernhard Doctrine*, 9 Stan. L. Rev. 281 (1957), and his later article, *Civil Procedure: The Tempest Brews*, 53 Calif. L. Rev. 25, 38-46 (1965) wherein the decisions are collected and analyzed. Bernhard v. Bank of America National Trust & Savings Association, 19 Cal. 2d 807, 122 P.2d 892 (1942); Bruszewski v. United States, 181 F.2d 419 (3rd Cir., 1950); Zdanok v. Glidden Co., 327 F.2d 944 (2nd Cir., 1964), cert-denied, 377 U.S. 934.

[48] Nickerson v. Pep Boys—Manny, Moe & Jack, 247 F. Supp. 221, 148 USPQ 125, 126 (D. Del. 1965).

entitled to his day in court on each issue against each potential adversary.[49] The doctrine also seeks to protect a litigant from the harassment and expense of having to repeat his defense on an issue already decided. Furthermore, the doctrine also stabilizes legal relationships by not subjecting the same parties to conflicting decisions, as well as putting an end to controversies between two litigants.[50]

In the typical patent suit, the patentee may enforce his patent[51] in a civil action for infringement[52] against the alleged infringer.[53] Once the question of infringement and validity has been finally adjudicated, the doctrines of res judicata and collateral estoppel will preclude the same parties from relitigating the same issues.[54]

Where the parties are different, however, the courts commonly apply the general rule of mutuality. In *Triplett* v. *Lowell*,[55] the Court held that an adjudication adverse to a claim in a patent does not preclude another suit upon the same claim against a different defendant. The Court stated:

> Neither reason nor authority supports the contention that an adjudication adverse to any or all the claims of a patent precludes another suit upon the same claims against a different defendant. While the earlier decision may be given great weight in a later litigation and thus persuade the court

[49] James, *supra* note 1, at 597-599 (1965); Note, *Res Judicata With Reference to Persons Neither Parties nor Privies—Two California Cases*, 57 Har. L. Rev. 98, 105 (1943).

[50] See the recent case, Technograph Printed Circuits, Ltd. v. United States, F.2d, 153 U.S.P.Q. 298, 303-04 (Ct. Cl., 1967), where the Court refused to allow a defendant-infringer to utilize the estoppel defense.

[51] See 35 U.S.C. 281-293 (1964).

[52] 35 U.S.C. 281 (1964).

[53] Under 35 U.S.C. 271(a), the patentee is given the right to exclude all others from making, using, and selling, the claimed invention. Where such an action is brought, the defendant will usually set up a defense of invalidity of the patent. Most patents are held invalid because the intention was obvious to one of ordinary skill in the art, at the time of the invention. 35 U.S.C. 103.

[54] Plymouth Rubber Company, Inc., v. Minnesota Mining and Manufacturing Co., 267 F.2d 443, 125 U.S.P.Q. 508 (D. Mass. 1960).

[55] 297 U.S. 638 (1935).

> to render a like decree, it is not res adjudicata (sic) and may not be pleaded as a defense.[56]

Since the Supreme Court's affirmation of the mutuality rule in *Triplett* v. *Lowell*[57] in patent-validity litigation, the courts of appeals and district courts have continued to follow, with only one exception,[58] the rule set down in *Triplett*.[59] Courts have reasoned that "a stranger to a previous patent suit is neither harassed, put to additional expense, nor compelled to relitigate an issue, and there is no danger of being victimized by inconsistent decisions.[60] As a result, the mutuality rule should be maintained, and a patent which has been adjudged invalid may be litigated ad infinitum. However, there are more important factors in the public interest which *must* be considered before a conclusion can be drawn as to the status of the mutuality rule in validity litigation. Concern for the broader public problems is essential.

In Aghnides v. Holden,[61] Judge Schnackenberg commented:

[56] *Id.* at 642, *c.f.* Nickerson, *supra* note 47, at 222, where the Court criticized the Triplett decision as not resting on a solid foundation, primarily because the Court cited two decisions, Mast, Fova, & Co. v. Stover Mfg. Co. 177 U.S. 485 (1900) and Santary Refr. Co. v. Winters, 280 U.S. 30, 35 (1929), both of which deal with comity, and not res judicata or collateral estoppel.

[57] *Ibid.*

[58] Nickerson, *supra* note 48.

[59] See, e.g., Automatic Radio Mfg. Co. v. Hazeltine Research, Inc., 176 F.2d 799, 808, 82 USPQ 324, 332 (1st Cir. 1949), aff'd 339 U.S. 827, 85 USPQ 378 (1950); Tatko Bros. Slate Co. v. Hannon, 122 USPQ 585, 586 (2nd Cir., 1959), *cert. denied*, 361 U.S. 915, 123 USPQ 591; Urguhart v. Commissioner, Internal Revenue Service, 102 USPQ 427, 429 (3 Cir. 1954); S. H. Kress & Co. v. Aghnides, 113 USPQ 395, 396-97 (4 Cir., 1957); Bros Inc. v. W. E. Grace Mfg. Co. 147 USPQ 1 (5th Cir., 1966); Gordon Johnson Co. v. Hunt, F. Supp., 96 USPQ 92 (D.N. Ohio, 1952); Technograph Printed Circuits, Ltd. v. Methode Electronics Inc., 148 USPQ 181 (7th Cir., 1966); John Deere Co. of Kansas City v. Graham, 142 USPQ 243 (8th Cir., 1965); Abington Textile Machinery Works v. Carding Specialists Ltd., 148 USPQ 33 (D.D.C. 1966).

[59] Technograph Printed Circuits, Ltd. v. United States, *supra* note 49, at 304.

[60] 226 F.2d 949, 107 USPQ 195 (7th Cir., 1955).

[61] It has been estimated that the minimum cost of conducting a patent infringement suit is about $50,000 for each side. Gorn, "Economic Value of Patents," The Encyclopedia of Patent Practice and Invention Management.

I believe . . . he (the patentee) is entitled under existing law to another day in court where he might litigate the same issues upon which he lost in the Goodrie case. . . . He . . . may litigate and relitigate again and again the questions of validity of his patent as long as he selects a different defendant in each of the infringement suits which he files. . . . It is a situation which is particularly abhorrent when considered against the backlog of untried cases which clog our Federal Courts. The latter are cases where the litigant asks only for his day in court, not for a plurality of days in court as Aghnides is entitled to under existing law. The remedy is not in our hands. The Congress by legislation could grant relief.

Because the patentee is able to constantly relitigate his patent, there is a shocking waste of time and effort in in order to have a reconsideration of the same references and same contentions in court after court, in the determination of the validity of the patent. A patentee should not have to litigate the validity of his patent all over again each time he sues a different infringer in a different circuit.

Not only does the patentee's right to relitigate contribute to a heavy backlog of cases in the Federal District Courts, but it may also unjustly subject a defendant-infringer to unusually high litigation costs.[62] It is quite expensive to determine validity under present law because the infringer is never quite sure what date of invention the patentee can prove, nor what date of invention can be proved for some reference art.

Another factor which causes the patentee to continually relitigate his patent in various circuits is the uncertainty as to a ruling on validity. For example, where suits are filed against infringers, all in different circuits, it seems quite illogical how there could be more than one conclusion on the question of validity, because the patent is the *same* in every case, and the defendant has access

[62] *Supra* note 58. In this case, no less than ten prior decisions are tabulated which has occupied the attention of no less than twenty-five Judges in the Fifth, Sixth, and Eighth Circuits. Such judicial conflict may be attributed to differing judicial interpretations, for example, what is public use under 35 U.S.C. 102(b)? Compare Picard v. United Aircraft, 128 F.2d 632, 635, (2nd Cir., 1942) with Gayler v. Wilder, 51 U.S. 477 (1850).

to the *same* prior art in each case. An example of such judicial conflict can be seen in *Bros Incorporated* v. *W. E. Grace Manufacturing Company et al.*[63] Despite possible conflicts in statutory interpretations, there are some circuits where no patents are upheld in contrast with some circuits which have a high percentage of patents held valid. Some judges are noted to have consistently held patents valid over a period of years while another judge in the same district has found every patent to be invalid, with one exception.[64]

An attempt to alleviate the problems of delay, uncertainty, and the great expense, would necessitate our abandonment of a strict adherence to the mutuality of estoppel doctrine. The above considerations warrant our rejection of the doctrine.

There have been proposals made that a holding of invalidity should be *in rem* (i.e., a theory of unilateral estoppel).[65] Proponents of *in rem* invalidity maintain that:

after a patent owner has had full opportunity to say everything he could say in support of his patent, there is no reason why he should have an opportunity to re-try the issue just because he can find and pursue a different infringer. That he could get a better expert or a better lawyer or a different Judge the second time is no sufficient reason. . .

Besides, if the second case should uphold the patent, the second infringer would be subject to the patent and also be in competi-

[63] A district judge in Texas has held in favor of the patentee in over 50 percent of the patent cases tried in his court over a period of ten years. During an equal period, the federal court in New Jersey has held patents invalid in 85 percent of the cases tried. Such figures as these indicate the substantial difference in attitudes of the courts. "An Analysis of Patent Litigation Statistics," Staff Report of the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, U.S. Senate (Gov't Printing Office, 1961).

[64] Section 294 of S. 1042, 90th Cong. 1st Sess. (1967), provides that any final adjudication in a Federal Court adverse to the validity or scope of a patent claim constitutes an estoppel against the patentee and those in privity with him. Any claim held invalid would be cancelled from the patent. See also Proposal XXIII, Report of the President's Commission on the Patent System.

[65] Report of Meeting of Council and Committee Chairmen, Woodward, Section of Patent, Trademark, and Copyright Law, American Bar Association, Feb 4-5, 966. See also, *President Commission Report*, at 39; Wright. *U. S. Patent System and the Judiciary*, 47 J.P.O.S. 727.

tion with the first infringer who can legally disregard the patent.[66]

It has been suggested that the above proposal is one-sided and works only against the patent owner, thus diminishing the ability of the patent system to furnish an incentive. To avoid this, it has been suggested that the patentee be required to give public notice of a fully *in rem* determination on validity six months prior to the commencing of an infringement suit, so anyone can come in and contest the validity of the patent.[67] The effect of such a determination would be conclusive against all. To be effective, such a proposal would require an extension of the class action concept[68] as well as the rules governing service of process.[69]

In rem validity, in whatever form it may exist, still provides for many evils. For example, where a patent has consistently been held valid, a subsequent holding of invalidity by a state court, or in a federal court where a judge is totally unfamiliar with the protection of intellectual property, and the application of the patent laws to the various technologies[70] would be harsh and unjust to the patentee. Furthermore, *in rem* validity would encourage a more intensified forum shopping[71] which would take the form of studying the decisions of the various Federal Courts of Appeal and the opinions of particular judges in selecting the judicial district which would be most favorable to commence an action (i.e., for patent infringement or an action for declaratory judgment).

[66] See American Bar Association proceedings, Section of Patent, Trademark, and Copyright Law, Section XXIII (1967).

[68] Fed. R. Civ. P. 23.

[69] Fed. R. Civ. P. 69.

[70] See Soans, "*The Courts—Our Number One Problem*" 9 Idea 639 (1966). This short article discusses the reason why judges have acquired a negative attitude toward patents.

[71] It would be to the patentee's advantage to commence a patent infringement suit in a circuit and district which appear to be favorable to patents. The patentee's choice of forum is limited under the special venue statute [28 U.S.C. 1400(b)] to the district of the defendant's residence or incorporation or to any district where the defendant has committeed an act of infringement and maintains a regular and established place of business. The potential defendant has a much wider choice of forum under 28 U.S.C. 1391. Thus a party threatened with an infringement sent by a corporation will frequently commence an action for declaratory judgment of invalidity and noninfringement in a circuit and district regarded as hostile toward patents.

Judge Arthur M. Smith, of the Court of Customs and Patent Appeals, suggests the establishment of a specialized, Article III, Court of Patent Appeals,[72] consisting of a panel of qualified patent judges, and transfer to it the appellate jurisdiction (involving issues of patent infringement), as well as the jurisdiction in the CCPA and the Court of Appeal for the District of Columbia.[73] Many reasons have been set forth in support of such a proposal.[74] Some of these are: (1) it would reduce the duration and cost of litigation, (2) it would lessen the volume of litigation, (3) it would enable uniform interpretation of the law, (4) the judges for this court would be specialists in the application of patent law, (5) greater certainty as to rights of inventors and interest of the public because the court's decision is effective throughout the United States.[75]

The proposal for a court of patent appeals has also been the subject of much criticism. It has been argued that such a court would place an undue burden of expense on litigants because of the great traveling expenses.[76] Such a court would also tend to channelize the patent law into its own peculiar lines divorced from the development of the law as a whole.[77] This would be

[72] For a history of the bills presented to Congress to establish a court of patent appeals, see Conway, *Single Court of Patent Appeals—A Legislative History*, Report of the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, U.S. Senate (Gov't. Printing Office, 1959).

[73] See chapter 13, 35 U.S.C. (1964). See also Conway, *op. cit. supra* note 72.

[74] Conway, *supra* note 72, at 32-33.

[75] See also, Reynolds, *In Favor of a Single Court of Patent Appeals*, 13 JPOS 596 (1931), Rice, *A Court of Patent Appeals*, 17 J.P.O.S. 18 (1935); Brown, *The Situation Confronting Our Patent System*, 31 J.P.O.S. 159, 180 (1939); Zugelter, *Suggestions for Some Improvement in our Patent System*, 23 JPOS 62 (1941); Woodward, *Patents and Administrative Law*, 55 Harv. L. Rev. 950, 960 (1942).

[76] See Meroni, *Comments and Observation Concerning Recommendations in Report of the National Patent Planning Commission*, 26 JPOS 117, 125 (1944); Lane, *Why a Single Court of Patent Appeals is not Necessary*, 13 J.P.O.S. 569 (1931).

[77] "I think it might be desirable to have one court of patent appeals provided, with this proviso, and I for myself would regard it as absolutely

most unhealthy because license agreements are essentially contracts, an infringement is essentially a trespass, patent rights are a species of property rights, proof in patent litigation follows the rules of evidence, etc.[78] Also, patent cases frequently involve questions of other areas of the law such as unfair competition, antitrust law, trademarks, copyrights, and contract law. It would seem unsound to channel all these questions to a single court especially where some of these questions are controlled by local law.[79] In addition, such a proposal may run counter to the belief that patent controversies may best be handled by a nonspecialized judiciary.[80]

It has been suggested by Judge Smith that the appointment of specialized judges to the various federal district courts and courts of appeals throughout the ten circuits, so that the other members of the bench can be guided and assisted by those who know something of the patent law field and its problems.[81]

The need for such specialists was recognized long ago by Judge Learned Hand:[82]

> I cannot stop without calling attention to the extraordinary condition of the law which makes it possible for a man without any knowledge of even the rudiments of chemistry to pass on such questions as these. . . . In Germany . . . the court summons technical judges to whom technical questions are submitted and

critical, that is, that it should be a rotating court. I do not want to have a court of specialists, because we all get in love with ourselves." Parke Davis & Co. v. H. K. Mulford Co., 189 F. 95, 132 (Hand). See also Rifkind, *A Special Court for Patent Litigation? The Danger of a Specialized Judiciary*, 37 A.B.A. Jour. 425 (1951) wherein the author maintains that "in time such a body of law, secluded from the rest, develops a jargon of its own thought patterns which are unique, internal policies which it subserves and sometimes at odds with the policies pursued by the general law."

[78] Rifkind, *supra* note 77.

[79] See Frost, "*The Patent System and the Modern Economy*," Report of The Subcommittee on Patents, Trademarks, and Copyrights, of the Committee on the Judiciary, U.S. Senate (Gov't. Printing Office, 1957).

[80] Wright, *U.S. Patent System and the Judiciary*, 47 J.P.O.S. 727, at 732 (1965).

[81] Smith, "*Specialized Patent Judges*, American Bar Association, Section of Patent, Trademark and Copyright law, at 84 (1966). See also, American Patent Law Association, Report of the Special Committee to Study the Patent System, at 12 (1966).

[82] Parke Davis & Co. v. H. K. Mulford Co., *supra* note 77, at 115.

> who can intelligently pass upon the issues without blindly groping among testimony upon matters wholly out of their ken.

This proposal overlooks the reason for such an appointment of specialized judges to the bench. It is not because of the ordinary judge's lack of knowledge of patent law, but rather because of his specialty in a particular technology. The main disadvantages of such a scheme are two-fold. There is always the risk that the "patent member" of a court of appeals panel would tend to dominate patent decisions even though he may only have a minority voice. Furthermore, the expert will not be an expert in all technical areas. If the judge is a mechanical engineer, he might be very helpful in interpreting the claims of a mechanical case. However, he may be of little help in the understanding of the claims of a chemical invention.

Among other proposals which have been the subject of much discussion and debate include: (a) technical assistants be assigned to the various federal courts,[83] (b) separate determination of validity of a patent by a tribunal of technically qualified patent specialists in the executive branch of the judicial branch in an adversary proceeding instituted by the patentee or any other person. The effect of such a decision would be *in rem*.[84]

The above proposals will help reduce, to an extent, the problems of litigation costs, repetitive nature of patent litigation, and the great uncertainty associated with patent litigation. However, the proposals discussed above will have other harmful effects on the judiciary and the patent system as a whole. It is felt, therefore, that an alternative proposal should be made.

It is hereby proposed that where a patentee's claims are held invalid by a court of competent jurisdiction, the patentee may either disclaim the invalid claims [i.e. by

[83] Whinery, *The Role of the Court Expert in Patent Litigation*, Study of the Subcommittee on Patent Trademarks, and Copyrights of the Committee on the Judiciary, U.S. Senate (Gov't. Printing Office, 1958). A study of the function of a neutral expert in patent litigation is presented in great depth.

[84] Section of Patent, Trademark, and Copyright Law, American Bar Association (1966) at page 46.

terminal disclaimer, 25 U.S.C. §253 (1964)] or he may proceed against another infringer within a reasonable time. In the event the claims are *again* held invalid, the plaintiff will be held liable, except under exceptional circumstances, for both litigation costs,[85] as well as reasonable attorney's fees.[86]

This provision would constitute a logical extension of the present statute where "the court in *exceptional cases* may award reasonable attorney's fees to the prevailing party.[87] This statute has been employed by courts, on a limited basis, where there has been a gross injustice to an alleged infringer.[88] One of the objects of the proposal is to discourage vexatious and unjustified litigation and should be invoked when, and only when, such is clearly shown.[89]

The proposal will be consistent with past legislative policy against permitting recovery of attorney's fees as the ordinary thing in patent suits. Furthermore, the proposal is entirely consistent with recent judicial developments which preclude a patentee from asserting his rights contrary to public interest.[90]

The legal effect of such a statutory provision would merely raise a presumption that the patentee's conduct

[85] 28 U.S.C. 1920 provides for items comprising costs. A judge or clerk of any court of the United States may tax as costs the following:
(1) fees of the clerk and marshall
(2) fees of court reporters for all or any part of the stenographic transcript necessarily obtained for use in the case
(3) fees and disbursements for printing and witnesses
(4) fees for exemplification and copies of paper necessarily obtained for use in the case
(5) docket fees 1923 of title 28

[86] See Tidewater v. Kitchen, 152 U.S.P.Q. 36 (4th Cir., 1967) when a similar application of the proposal is considered.

[87] 35 U.S.C. § 285 (1964) (Emphasis added).

[88] Fees have been awarded where the conduct of the party is characterized as unfair or vexatious or involving bad faith or some other equitable consideration which makes it unjust that that prevailing party should be left to bear the burden of his counsel fees. See Plymouth Rubler Co. v. Minnesota Mining & Mfg. Co., 133 U.S.P.Q. 173, 177 (D. Mass. 1962).

[89] It is not contemplated that the recovery of attorney's fees will become an ordinary thing in patent suits,.... The provision is also made general so as to enable the court to prevent a gross injustice to an alleged infringer." 1946 U.S. Code Congressional Service, 1386, 1387.

[90] See e.g., Mercoid Corp. v. Mid-Continent Inv. Co., 320 U.S. 661 (1944); Edward Katzinger Co. v. Chicago Metallic Mfg. Co., 329 U.S. 394 (1947); Morton Salt Co. v. G. S. Suppiger Co., 314 U.S. 488 (1942).

in commencing the action against the infringer is unjust. The patentee would then have the burden to show the good faith of this action against the infringer in order to destroy the presumption. The net effect of this provision is to discourage one from continually relitigating his patent rights against alleged infringers which contributes to the great backlog of patent infringement suits. Such a provision would also materially reduce the evils that would arise if any of the above discussed proposals were to be adopted. It is essential that Congress act now because the fact remains that unless, and until, the present law is changed, patent litigation will continue to be subject to repetitious patent suits, and unnecessary litigation costs, in addition to the great burden on the judicial machinery to handle the great backlog of cases.